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Friday
May 17, 1991

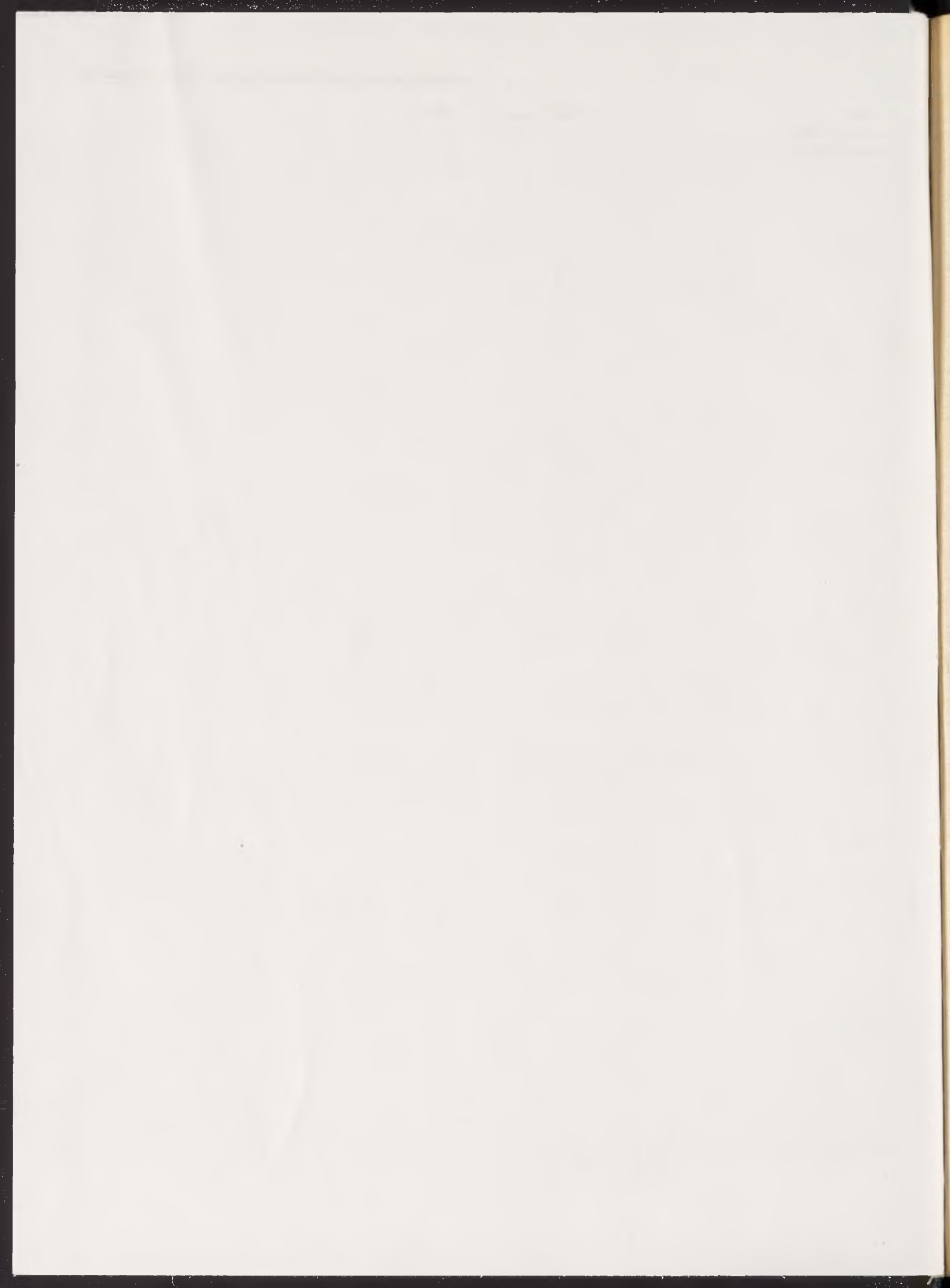
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Federal Register

Briefings on How To Use the Federal Register
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THE FEDERAL REGISTER

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

- WHEN:** May 21, at 9:00 am
- WHERE:** 26 Federal Plaza
Room 305 B and C
New York, NY
- RESERVATIONS:** Federal Information Center
1-800-347-1997

WASHINGTON, DC

- WHEN:** May 23, at 9:00 am
- WHERE:** Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
- RESERVATIONS:** 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Federal Register

Vol. 56, No. 96

Friday, May 17, 1991

This section of the **FEDERAL REGISTER** contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first **FEDERAL REGISTER** issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 299, 392, and 499

(INS No. 1292-91)

RIN No. 1115-AC06

Posthumous United States Citizenship for Certain Aliens; Immigration and Nationality Forms; Display of Control Numbers; Fees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements the Posthumous Citizenship for Active Duty Service Act of 1990, Public Law 101-249, March 6, 1990, establishing the criteria and procedures for granting posthumous citizenship to an alien or noncitizen national of the United States, who dies as a result of injury or disease incurred in, or aggravated by service, in the United States Armed Forces during a specified period of military hostilities. This rule also identifies who may request posthumous citizenship on the alien or noncitizen national's behalf. In addition, this rule updates the listings of forms contained in 8 CFR 299.5 and 499.1, and adds a filing fee for an application for posthumous citizenship. This is not a benefit program; rather, it is an honorific action intended to recognize the valor and sacrifices of aliens and noncitizen nationals who give or have given their lives in defense of the United States.

DATES: This interim rule is effective May 17, 1991. Comments must be submitted no later than June 17, 1991.

ADDRESSES: Please submit written comments in triplicate to Director, Policy Directives and Instructions,

Immigration and Naturalization Service, Room 5304, 425 I Street, NW., Washington, DC 20536. Please include INS Number 1292-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT:

Stella Jarina, Senior Immigration Examiner, Immigration and Naturalization Service, Room 7228, 425 I Street NW., Washington, DC 20536, Telephone: (202) 514-3946.

SUPPLEMENTARY INFORMATION: Section 329A of the Immigration and Nationality Act, as added by the Posthumous Citizenship for Active Duty Service Act of 1990, Public Law 101-249, provides for the granting of posthumous citizenship to an alien or noncitizen national of the United States who dies as a result of injury or disease incurred in or aggravated by service in an active-duty status in the United States Armed Forces during World War I, World War II, the Korean Hostilities, the Vietnam Hostilities, or in other periods of military hostilities. In addition, to be eligible for a grant of posthumous citizenship, the person's induction, enlistment, or reenlistment in the Armed Forces must qualify under the provisions of section 329 (a)(1) or (a)(2) of the Act.

This interim rule sets forth the eligibility criteria, identifies who may request posthumous citizenship on the person's behalf, and outlines the procedures the Immigration and Naturalization Service (Service) will use to grant posthumous citizenship. This rule also establishes and provides for the issuance of the Service document, in granted cases, that declares the person to be a citizen of the United States as of the time of death.

Congress has long recognized the patriotism and valor of aliens and noncitizen nationals who serve honorably on active duty with the United States Armed Forces by providing special naturalization benefits based upon such military service. However, for the first time in the history of our Nation's nationality laws, legislation has been enacted to administratively confer United States citizenship upon a deceased servicemember.

Public Law 101-249, enacted on March 6, 1990, duly recognizes the bravery and sacrifices of persons who, although not citizens of the United States, nevertheless served honorably on active

duty with the United States Armed Forces and gave their lives in the protection and defense of this Nation. By virtue of their military service, and consequent loss of life, these persons have clearly demonstrated a commitment to support and defend the Constitution and laws of the United States. This new law acknowledges their commitment and helps ensure that their sacrifices were not made in vain. As this is a symbolic measure, the granting of posthumous citizenship does not confer any benefit nor make applicable any provision of the Immigration and Nationality Act, as amended, to the surviving spouse, parent, son, daughter, or other relative of the decedent.

The Service's definition of the term "next-of-kin" for purposes of seeking a deceased person's posthumous naturalization includes the immediate family members listed under sections 201(b)(2)(A)(i) and 203(a) of the Act. These family members are the surviving spouse, son or daughter, parent, and brother or sister of the decedent. The definition clearly provides that it is the decedent's nearest relative who will be permitted to seek this benefit, to the exclusion of more remote relatives.

The term "another representative" is limited to the properly appointed representative of the decedent's estate, or the guardian, conservator or committee of the decedent's next-of-kin. A Service Organization recognized by the Department of Veterans Affairs will be permitted to act as representative and apply for posthumous naturalization on a person's behalf in such case where there is no surviving next-of-kin and where there is no other appointed representative as noted at the beginning of this paragraph.

Although the statutory language provides an alternate situation regarding who may file a request for posthumous citizenship, it is clear from the legislative history that the intended applicants are the family members of the decedent. In his testimony before the Subcommittee on Immigration, Refugees, and International Law on September 21, 1989, the Honorable Brian J. Donnelly, the Congressman from the State of Massachusetts who introduced this legislation, expressly stated that "the request for such a declaration would be made by the decedent's family." Therefore, where the decedent has a

next-of-kin as defined by the Service, an application for posthumous citizenship will be accepted from another representative only when authorization has been obtained from all surviving persons included in that definition. The only exception to this rule will be where the executor, clearly authorized to act on behalf of the decedent's estate, makes an application during execution of the estate. This objective standard will free the Service from the difficult, inherently subjective and somewhat emotional task of determining whether a person or entity who is not actually related to the decedent "represents" the decedent's interest.

While the Service is the agency responsible for establishing the procedure to grant posthumous citizenship, defining who may make a request for posthumous citizenship, and issuing a document declaring citizenship status, Congress has delegated the responsibility to certify the required military service and relating death to the executive department under which the person served. The Service will not make certifications with regard to these two elements under any circumstances.

The statute requires that a request for posthumous citizenship be accompanied by a duly authenticated certificate from the appropriate executive branch attesting to the decedent's military service and service-connected death. To facilitate the certification process, the Service is utilizing a processing approach that features the direct mail of requests on Form N-644, Application for Posthumous Citizenship, to the INS Service Center having jurisdiction over the applicant's state of residence. Persons residing outside the United States must submit the application to any one of the four Service Centers. After preliminary processing at the Service Center, the application is forwarded to Service Headquarters, and is then relayed to the Department of Defense for certification. An application submitted on behalf of a person who served in the United States Coast Guard during a designated period of military hostilities will be forwarded to the Department of Transportation. Since the Service determines who may apply for posthumous citizenship on behalf of a decedent, this processing method will avoid placing an administrative burden upon the executive departments in responding to requests for certification from persons who are not the decedent's next-of-kin or representative, as defined by Service, or in responding to duplicate requests for certification. Also, it will minimize confusion to the public

concerning where to send a request for military certification.

As no benefit derives from a grant of posthumous citizenship, the Service is not requiring the applicant to submit to an interview before an immigration officer. Upon the grant of posthumous citizenship, the applicant will be issued a Certificate of Citizenship in the name of the decedent. Delivery of the Certificate will be made by registered mail to the address in the United States or to the Service office or American Embassy or Consulate abroad, as appropriate, that is designated by the applicant.

This rule also amends the listing of forms contained in 8 CFR 299.5 and 499.1, and adds a fee to 8 CFR 103.7(b) for filing an application for posthumous citizenship.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are impractical and unnecessary as the changes have been mandated by the passage of the Posthumous Citizenship for Active Duty Service Act of 1990, Public Law 101-249. Immediate implementation will be advantageous to the family members or representative of the intended beneficiary as there is a limited time during which an application may be submitted on behalf of a person who died before enactment of Public Law 101-249.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of EO 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been submitted to OMB for review/approval under the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Archives and records, Fees, Forms.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

8 CFR Part 392

Aliens, Citizenship, Reporting and recordkeeping requirements.

8 CFR Part 499

Citizenship and Nationality forms.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding in proper numerical sequence, the Form N-644 to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form N-644. For filing application for posthumous citizenship—\$60.00.

* * * * *

PART 299—IMMIGRATION FORMS

3. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR part 2.

4. Section 299.5 is amended by adding, in proper numerical sequence, the Service form, N-644, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
N-644	Application for Posthumous Citizenship.	1115-0173

5. A new part 392 is added to read as follows:

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

Sec.

392.1 Definitions.

392.2 Eligibility for posthumous citizenship.

392.3 Application for posthumous citizenship.

392.4 Issuance of a certificate of citizenship.

Authority: 8 U.S.C. 1103, 1440 and note, and 1440-1; 8 CFR part 2.

§ 392.1 Definitions.

As used in this part:

Active-duty status means full-time duty in the active military service of the United States, and includes full-time training duty, which constitutes qualifying service under section 329(a) of the Act. Active service in the United States Coast Guard during one of the periods of hostilities specified herein shall constitute service in the military, air, or naval forces of the United States. Active-duty status also includes annual training duty and attendance, while in the active military service, at a service school designated by the military authorities under 10 U.S.C. 101(22). The order of a national guardsman into active duty for training under 10 U.S.C. 672 constitutes service in active-duty status in the military forces of the United States. Active duty in a noncombatant capacity is qualifying service.

Decedent means the person on whose behalf an application for a certificate of posthumous citizenship is made.

Induction, enlistment, and reenlistment, refer to the decedent's place of entry into active duty military service.

Korean Hostilities relates to the period from June 25, 1950, to July 1, 1955, inclusive.

Lodge Act means the Act of June 30, 1950, which qualified for naturalization nonresident aliens who served honorably for 5 years in the United States Army during specified periods, notwithstanding that they never formally became lawful permanent residents of the United States.

Next-of-kin means the closest surviving blood or legal relative of the decedent in the following order of succession:

- (1) The surviving spouse;
- (2) The decedent's surviving son or daughter, if the decedent has no surviving spouse;
- (3) The decedent's surviving parent, if the decedent has no surviving spouse or sons or daughters; or,
- (4) The decedent's surviving brother or sister, if none of the persons described in paragraphs (1) through (3) of this definition survive the decedent.

Other periods of military hostilities means any period designated by the President under Executive Order as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force.

Representative means:

- (1) The duly appointed executor or administrator of the decedent's estate, including a special administrator

appointed for the purpose of seeking the decedent's naturalization; or,

(2) The duly appointed guardian, conservator, or committee of the decedent's next-of-kin; or,

(3) A service organization listed in 38 U.S.C. 3402, or chartered by Congress, or State, or other service organization recognized by the Department of Veterans Affairs.

Vietnam Hostilities relates to the period from February 28, 1961, to October 15, 1978, inclusive.

World War I relates to the period from April 6, 1917, to November 11, 1918, inclusive.

World War II relates to the period from September 1, 1939, to December 31, 1946, inclusive.

§ 392.2 Eligibility for posthumous citizenship.

(a) *General.* Any alien or noncitizen national of the United States is eligible for posthumous United States citizenship who:

(1) Served honorably in an active-duty status with the military, air, or naval forces of the United States during World War I, World War II, the Korean Hostilities, the Vietnam Hostilities, or in other periods of military hostilities designated by the President under Executive Order; and,

(2) Died as a result of injury or disease incurred in or aggravated by service in the United States Armed Forces during a period of military hostilities listed in paragraph (a)(1) of this section. Where the person died subsequent to separation from military service, the death must have resulted from an injury or disease that was sustained, acquired, or exacerbated during active-duty service in a qualifying period of military hostilities as specified in this part.

(b) *Qualifying enlistment.* In conjunction with the qualifying service as described in paragraph (a)(1) of this section, the decedent must have:

(1) Enlisted, reenlisted, or been inducted in the United States, the Canal Zone, American Samoa, or Swains Island;

(2) Been lawfully admitted to the United States for permanent residence, at any time; or,

(3) Enlisted or reenlisted in the United States Army pursuant to the provisions of the Lodge Act. In such case, the decedent shall be considered to have been lawfully admitted to the United States as a permanent resident for purposes of this section, provided he or she:

(i) Entered the United States, its outlying possessions, or the Canal Zone, at some time during the period of army service, pursuant to military orders; and

(ii) Was honorably discharged following completion of at least 5 full years of active duty service, even though the active-duty service may not have occurred during a qualifying period of hostilities specified in section 329(a) of the Act.

(c) *Character of military service.* Where the character of military service is not certified as honorable by the executive department under which the person served, or where the person was dishonorably discharged or discharged under conditions other than honorable, such service shall not satisfy the requirement of paragraph (a)(1) of this section.

(d) *Certification of eligibility.* (1) The executive department under which the decedent served shall determine whether:

(i) The decedent served honorably in an active-duty status;

(ii) The separation from such service was under honorable conditions; and,

(iii) The decedent died as a result of injury or disease incurred in, or aggravated by active duty service during a qualifying period of military hostilities.

(2) The certification required by section 329A(c)(2) of the Act to prove military service and service-connected death shall be requested by the applicant on Form N-644, Application for Posthumous Citizenship. Form N-644 shall also be used to verify the decedent's place of induction, enlistment or reenlistment.

§ 392.3 Application for posthumous citizenship.

(a) *Persons who may apply.* (1) Only one person who is either the next-of-kin or another representative of the decedent shall be permitted to apply for posthumous citizenship on the decedent's behalf. A person who is a next-of-kin who wishes to apply for posthumous citizenship on behalf of the decedent, shall, if there is a surviving next-of-kin in the line of succession above him or her, be required to obtain authorization to make the application from all surviving next-of-kin in the line of succession above him or her. The authorization shall be in the form of an affidavit stating that the affiant authorizes the requester to apply for posthumous citizenship on behalf of the decedent. The affidavit must include the name and address of the affiant, and the relationship of the affiant to the decedent.

(2) When there is a surviving next-of-kin, an application for posthumous citizenship shall only be accepted from a representative provided authorization has been obtained from all surviving

next-of-kin. However, this requirement shall not apply to the executor or administrator of the decedent's estate. In the case of a service organization acting as a representative, authorization must also have been obtained from any appointed representative. A veterans service organization must submit evidence of recognition by the Department of Veterans Affairs.

Once the Service has granted posthumous citizenship to a person, no subsequent applications on his or her behalf shall be approved, nor shall any additional original certificates be issued, except in the case of an application for issuance of a replacement certificate for one lost, mutilated, or destroyed.

(b) *Filing of application.* (1) An application for posthumous citizenship shall be submitted by mail on Form N-644, according to the instructions on the form, to the INS Service Center having jurisdiction over the applicant's state of residence. Persons residing outside the United States must mail their applications to any one of the four Service Centers.

(2) Form N-644 must be accompanied by the appropriate fee specified by and remitted in accordance with the provisions of § 103.7 (a) and (b) of this chapter. The fee may not be waived or refunded. To facilitate the certification process, a legible copy of each of the following documents, if available, should be submitted with Form N-644:

- (i) DD Form 214, Certificate of Release or Discharge from Active Duty;
- (ii) DD Form 1300, Report of Casualty/Military Death Certificate; or,
- (iii) Other military or State-issued death certificate.

(c) *Application period for requesting posthumous citizenship.* Form N-644 shall be filed with the appropriate INS Service Center not later than March 5, 1992, or 2 years after the date of the person's death, whichever date is later.

(d) *Denial of application.* When the application is denied, the applicant shall be notified of the decision and the reason(s) for denial. There is no appeal from the denial of an application under this part.

§ 392.4 Issuance of a certificate of citizenship.

(a) *Approval of application.* If the application (Form N-644) is approved, the director of the Service Center shall issue a Certificate of Citizenship, Form N-645, to the applicant, in the name of the decedent.

(b) *Delivery of certificate.* Delivery of the Certificate of Citizenship shall be made by registered mail to the address designated by the applicant. If the

applicant resides outside the United States, the certificate shall be sent by registered mail to the Service office abroad, if one is located where delivery is to be made; otherwise, it shall be forwarded to the nearest American Embassy or Consulate.

(c) *Effective date of citizenship.* Where the Service has approved an Application for Posthumous Citizenship (Form N-644), the decedent shall be considered a United States citizen as of the date of his or her death.

(d) *Ineligibility for immigration benefits.* The granting of posthumous citizenship under section 329A of the Immigration and Naturalization Act, as amended, and issuance of a certificate under paragraph (a) of this section, shall not entitle the surviving spouse, parent, son, daughter, or other relative of the decedent to any benefit under any provision of the Act. Nor shall such grant make applicable the provisions of section 319(d) of the Act to the surviving spouse.

(e) *Replacement certificate.* An application for a replacement Certificate of Citizenship (Form N-645) shall be made on Form N-565, Application for a New Naturalization or Citizenship Paper, for a lost, mutilated, or destroyed certificate. Form N-565 shall be completed according to the instructions on the form and submitted by mail with the appropriate fee to the INS Service Center having jurisdiction over the applicant's state of residence. Persons residing outside the United States must mail their application to the Service Center that issued the original certificate.

PART 499—NATIONALITY FORMS

6. The authority citation for part 499 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

7. Section 499.1 is amended by adding in proper numerical sequence, two Service forms, N-644 and N-645 to read as follows:

§ 499.1 Prescribed forms.

Form No.	Title and description
N-644 ()	—Application for Posthumous Citizenship.
N-645 ()	—Certificate of Citizenship.

Dated: March 11, 1991.

Gene McNary,
Commissioner, Immigration and
Naturalization Service.

[FR Doc. 91-11602 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-10-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-29187]

Acceptance of Reimbursement for Travel Expenses

AGENCY: Securities and Exchange Commission.

ACTION: Notice of implementation of interim rule.

SUMMARY: The Commission will implement the interim government-wide rule concerning host paid travel by retaining the more specific and stricter standards set forth in rule 4-5 of the Commission's Conduct Regulation, 17 CFR 200.735-4(b)(6), to the extent the latter is not inconsistent with the interim government-wide rule.

DATES: Issued on May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Lyn Blatch, Ethics Counsel, Office of the General Counsel, (202) 272-2437.

SUPPLEMENTARY INFORMATION: On March 8, 1991, the General Services Administration published a government-wide interim rule which provides authorization for host paid travel, "Acceptance of Payment From a Non-Federal Source For Travel Expenses." ¹ That rule contains general criteria for acceptance of reimbursement from non-federal sources. The Commission has determined that it will implement the interim government-wide rule by retaining the more specific and stricter provisions contained in rule 4-5a-h of the Commission's Conduct Regulation, 17 CFR 200.735-4(b)(6) (i)-(v), to the extent the latter is not inconsistent with the government-wide rule. Adherence to the more specific provisions of rule 4-5a-h is expected to expedite administrative determinations and ensure consistency throughout the agency.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-11719 Filed 5-16-91; 8:45 am]

BILLING CODE 8010-01-M

¹ Revisions to 41 CFR parts 301-1, 304-1, and 304-2, at 56 FR 9878-9881 (March 8, 1991), as amended at 56 FR 11105-11106, and 11304 (March 15, 1991).

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Order No. 1494-91]

Fee for Production of Federal Bureau of Investigation Identification Record

AGENCY: Federal Bureau of Investigation, Justice.**ACTION:** Final rule.

SUMMARY: This final rule amends 28 CFR 16.33 to increase from \$14 to \$17 the fee charged by the Federal Bureau of Investigation (FBI) Identification Division for the production of identification records to the subjects of those records.

EFFECTIVE DATE: May 17, 1991.**FOR FURTHER INFORMATION CONTACT:**

Melvin D. Mercer, Jr., Chief of the Correspondence and Special Services Section, Identification Division, FBI, Washington, DC 20537-9700, telephone number (202) 324-5454.

SUPPLEMENTARY INFORMATION: A proposed rule to increase the fee for the production of identification records to the subjects of such records was published for notice and comment in the *Federal Register* on January 31, 1991 (56 FR 3812). Interested persons were allowed 30 days to submit comments on the proposal. No comments were received.

Departmental Order 556-73 (38 FR 32806, November 28, 1973) directed that the FBI publish rules for the dissemination of arrest and conviction records upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from accessing those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, a set of rolled-in inked fingerprint impressions, and the appropriate processing fee. Based on current cost analysis, the cost for production of an FBI identification record has increased from \$14 to \$17.

This is not a major rule within the meaning of Executive Order No. 12291, and it will not have a substantial impact on a significant number of small businesses.

This final rule change necessitates changes to 28 CFR 16.33.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Act.

PART 16—[AMENDED]

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, and 5 U.S.C. 301, part 16, subpart C of title 28 of the CFR is amended as follows:

The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.33 is revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of \$17.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigence.

Dated: May 7, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-11632 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.**ACTION:** Stay of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is staying the effective date of the final rule revising its safety standards for explosives at metal and nonmetal mines until July 16, 1991.

EFFECTIVE DATE: The final rule, published on January 18, 1991 (56 FR 2070), is stayed effective May 17, 1991 until July 16, 1991 except for the provisions in 30 CFR 56.6000, 56.6306, 56.6130, 56.6131, 56.6501, 57.6000, 57.6306, 57.6130, 57.6131, and 57.6501 stayed

indefinitely on April 10, 1991 (56 FR 14470).

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

On January 18, 1991, MSHA published a final rule in the *Federal Register* (56 FR 2070) revising its safety standards for explosives at metal and nonmetal mines. These standards were scheduled to take effect on May 20, 1991. On May 10, 1991 the Institute of Makers of Explosives (IME) requested that MSHA reconsider the entire rule.

The Agency is staying for sixty days the effective date of the final rule. During the 60 day stay, MSHA will reassess the rulemaking record and consider IME's request for reconsideration of the rule. This notice does not affect the indefinite stay of four provisions of the rule made by MSHA on April 10, 1991 (56 FR 14470). MSHA will publish a further notice concerning this rulemaking prior to July 16, 1991.

This limited duration stay of the entire rule resulted from concerns expressed by the IME, explosives manufacturers, and mine operators. The existing regulations in subpart E of parts 56 and 57 of 30 CFR continue in effect.

This document is issued under 30 U.S.C. 811.

Dated: May 14, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-11823 Filed 5-16-91; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD7 91-33]

Safety Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: The Coast Guard is amending the safety zone described in 33 CFR 165.728 to include Gate Terminal Berth #1 and all waters within the Back River at Blount Island. This action is being taken as this area is to become the main Maritime Prepositioned Ship loading and unloading arena.

DATES: This regulation becomes effective on May 1, 1991. Comments on

this regulation must be received on or before July 1, 1991.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, Florida, 32206-3497. The comments will be available for inspection and copying at MSO Jacksonville, room 222. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Maes, Telephone: (904) 791-2648.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazards which may occur within the water and shore areas involved.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "address" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Michael J. Bosley, project officer for the Captain of the Port, and Lieutenant G.G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

Gate Terminal Berth #1, Blount Island, Jacksonville, Florida, having been designated to handle hazardous materials which includes the movement of Class A Explosive for the Maritime Prepositioned Ship Program, requires the amending of Regulation 33 CFR 165.728, to encompass this area. No persons or vessels will be allowed within the area without the permission of the Captain of the Port.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.728 is amended by adding paragraph (a)(3), and revising paragraphs (b) and (d) to read as follows:

§ 165.728 Jacksonville, Florida—Safety Zones.

(a) * * *

(3) Zone C: 100 yards in all directions on land from Gate berth #1 and all waters within the Back River (locally known as the Gate Slip) on Blount Island, Jacksonville, Florida, commencing from a line drawn between the southwesterly most shore point latitude 30°23'34", longitude 81°30'52" and the southeasterly most shore point latitude 30°23'38", longitude 81°30'36".

(b) The areas described in paragraph (a) of this section may be closed to all vessels and persons, except those vessels and persons authorized by the Commander, Seventh Coast Guard District or the Captain of the Port, Jacksonville, Florida, whenever specified Maritime Prepositioned Ships are transiting the St. Johns River (Zone A), moored at Blount Island (Zone B), or moored at Gate Terminal (Zone C).

* * * * *

(d) The Captain of the Port Jacksonville, Florida will activate the safety zones or specific portions of them by issuing a local broadcast notice to mariners. The closing of the area at Blount Island, described above, will be signified by the display of a rotating yellow light located on the waterfront at Blount Island Marine Terminal or at the Gate Terminal Berth #1.

Dated: April 18, 1991.

R.J. O'Pezio,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, FL.

[FR Doc. 91-11751 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD7 91-34]

Security Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the security zone described in 33 CFR 165.729 to include Gate Terminal Berth #1 and all waters within the Back River at Blount Island. This action is being taken as this area is to become the main Maritime Prepositioned Ship loading and unloading arena.

DATES: This regulation becomes effective on May 1, 1991. Comments on this regulation must be received on or before July 1, 1991.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, Florida, 32206-3497. The comments will be available for inspection and copying at MSO Jacksonville, room 222. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Maes, Telephone: (904) 791-2648.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazards which may occur within the water and shore areas involved.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "address" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give

reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Michael J. Bosley, project officer for the Captain of the Port, and Lieutenant G.G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

Gate Terminal Berth #1, Blount Island, Jacksonville, Florida, having been designated to handle hazardous materials which includes the movement of Class A Explosives for the Maritime Prepositioned Ship Program, requires the amending of Regulation 33 CFR 165.729, to encompass this area. No persons or vessels will be allowed within the area without the permission of the Captain of the Port.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 100.5.

2. Section 165.729 is amended by adding paragraph (a)(3), and revising paragraphs (b) and (d) to read as follows:

§ 165.729 Jacksonville Harbor, Florida—Security Zones.

(a) * * *

(3) Zone C: 100 yards in all directions on land from Gate berth #1 and all waters within the Back River (locally known as the Gate Slip) on Blount Island, Jacksonville, Florida, commencing from a line drawn between

the southwesterly most shore point latitude 30°23'34", longitude 81°30'52" and the southeasterly most shore point latitude 30°23'38", longitude 81°30'36".

(b) The areas described in paragraph (a) of this section shall be closed to all vessels and persons, except those vessels and persons authorized by the Commander, Seventh Coast Guard District or the Captain of the Port, Jacksonville, Florida, whenever specified Maritime Prepositioned Ships are transiting the St. Johns River (Zone A), moored at Blount Island (Zone B), or moored at Gate Terminal (Zone C).

* * * * *

(d) The Captain of the Port Jacksonville, Florida will activate the security zones or specific portions of them by issuing a local broadcast notice to mariners. The closing of the area at Blount Island, described above, will be signified by the display of a rotating yellow light located on the waterfront at Blount Island Marine Terminal or at the Gate Terminal Berth #1.

Dated: April 18, 1991.

R.J. O'Pezio,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, FL.

[FR Doc. 91-11752 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-609; RM-7542]

Radio Broadcasting Services; Nephi, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Charles D. Hall, permittee of Station KCDH(FM), substitutes Channel 280C for Channel 224A at Nephi, Utah, and modifies his authorization to specify operation on the non-adjacent, higher powered channel. See 55 FR 52185, December 20 1990. Channel 280C can be allotted to Nephi, Utah, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 280C are North Latitude 39-42-36 and West Longitude 111-50-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-609, adopted April 29, 1991, and released May 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC, 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 224A and adding Channel 280C at Nephi.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11695 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 910506-1106]

RIN 0648-AD24

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This final rule (1) changes from June 1 to May 15 the commencement date of the closure to trawl fishing in the exclusive economic zone (EEZ) off Texas (Texas closure) and extends the maximum allowable Texas closure to 90 days; and (2) removes seabobs and rock shrimp from management under the FMP, except for the recordkeeping and catch reporting requirements. The intended effects of this rule are to allow

flexibility in the dates of the Texas closure so that juvenile brown shrimp may be adequately protected and to remove from the management unit those species of shrimp not in need of Federal management.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

SUPPLEMENTARY INFORMATION: The shrimp fishery of the Gulf of Mexico is managed under the FMP, prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 5 to the FMP revises the commencement date and allows for a longer period for the annual Texas closure and deletes seabobs and rock shrimp from management under the FMP, except for the recordkeeping and reporting requirements. Amendment 5 also contains definitions of overfishing for brown, pink, and royal red shrimp, as required by 50 CFR 602.11(c), and specifies actions to be taken if recruitment overfishing of brown or pink shrimp occurs.

The rationales for the changes in the Texas closure and for the deletion from the management unit of seabobs and rock shrimp are contained in the proposed rule (56 FR 8737, March 1, 1991) and are not repeated here. Additional information on the definitions of overfishing and actions to be taken if recruitment overfishing of brown or pink shrimp occurs is contained in Amendment 5, the availability of which was announced in the *Federal Register* on February 13, 1991 (56 FR 5792).

Comments and Responses

Written comments on Amendment 5 and the proposed rule were received from three commercial shrimp fishing organizations, a shrimp processor, and a member of Congress. All commenters supported the proposed basic Texas closure from May 15 to July 8.

Comment: One of the commercial shrimp fishing organizations, the shrimp processor, and the member of Congress expressed concern about the potential for unilateral action by NOAA to impose a 90-day closure of the EEZ off Texas.

Response: This concern is unfounded. NOAA is precluded from changing the dates and length of the Texas closure unilaterally. Amendment 5 states that, "the U.S. Department of Commerce will close the EEZ, and the time of closing shall correspond to the closure by Texas

of its Gulf waters." Section 658.25(b)(1) of the implementing regulations, which is not changed by this final rule, requires the Regional Director, Southeast Region, NMFS, to base any adjustments of the closing or opening dates on the biological data that are collected by the Texas Parks and Wildlife Department and used to predict when brown shrimp will reach a total length of 80 to 90 millimeters, and on tidal and other ecological data relevant to the timing and duration of the closure. The regulations also require the Regional Director to consult with the Texas Parks and Wildlife Department before adjusting the closing or opening date.

Comment: Two commercial shrimp fishing organizations wanted the length of the Texas closure to range from a minimum of 45 days to a maximum of 60 days rather than from a minimum of 45 days to a maximum of 90 days.

Response: NOAA disagrees. The longer maximum range provides additional flexibility to the management regime so that NOAA and the Texas Parks and Wildlife Department may respond better to the effects of climatic variation on shrimp growth and emigration from the estuaries.

Comment: One commercial shrimp fishing organization opposed closure of the EEZ off Texas out to 200 miles due to its adverse financial effects on the owners and operators of shrimp vessels and on shrimp processors. This organization proposed that closure of the EEZ should extend to 15 miles.

Response: NOAA disagrees. The first objective of the FMP is to "optimize the yield from the shrimp recruited to the fishery." This means maximizing the value of shrimp landed while minimizing waste (discards) of small shrimp. After reviewing the financial status of the shrimp fleet and information on the relative impacts of the 15-mile and 200-mile closures of the EEZ on the owners of the shrimp vessels, fishermen, support industries, and enforcement activities of the Coast Guard, and on the biology of the shrimp resources, the Council voted to retain the 200-mile closure. The Council and NOAA believe that a 200-mile closure achieves the first objective of the FMP better than a 15-mile closure.

Comment: One commercial shrimp fishing organization recommended that NOAA implement a no-cost license for shrimp vessels as a means of identifying the number of vessels and amount of gear in the fishery.

Response: NOAA agrees in part and will consider licensing if submitted in an amendment to the FMP. NOAA does not agree that licenses or permits should be free. As authorized by the Magnuson Act, a permitting fee should be charged

to cover the administrative costs of issuing the permit.

Classification

The Secretary of Commerce determined that Amendment 5 is necessary for the conservation and management of the shrimp fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Council prepared a regulatory impact review (RIR) that analyzes the economic impacts of this rule and describes its effects on small business entities. The RIR concludes that Amendment 5 will have minimal economic effects and will not have a significant economic impact on a substantial number of small entities. Accordingly, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities; and a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this final rule. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Council determined that this final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida agreed with the determination. Alabama, Louisiana, and Mississippi did not comment within the statutory time period; therefore, state agency agreement with the consistency determination is presumed.

A consultation conducted in accordance with section 7 of the Endangered Species Act concluded that neither the fishery nor this action would adversely affect populations of endangered/threatened species such as sea turtles, as long as the current turtle

excluder device regulations remain in effect.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(3)), finds for good cause, namely, as regards changes to the Texas closure, to ensure that flexibility in setting the dates of the Texas closure is available in 1991 and, thus, the full benefits of the Texas closure may be attained in 1991, that it is impracticable to delay for 30 days the effective date of this rule. Accordingly, the closure changes are effective upon publication. The other regulatory provisions relieve a restriction, and are being made effective upon publication.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 1991.

Michael F. Tilman,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.1 paragraph (b) is revised to read as follows:

§ 658.1 Purpose and scope.

(b) The regulations in this part govern fishing for brown shrimp, white shrimp, pink shrimp, and royal red shrimp by vessels of the United States in the EEZ of the Gulf of Mexico. In addition, the regulations in this part govern recordkeeping and reporting for the above-mentioned shrimp, and for seabobs and rock shrimp, that are caught or landed in or from the EEZ of the Gulf of Mexico or in or from adjoining state waters.

3. In § 658.6, paragraph (a) introductory text is revised to read as follows:

§ 658.6 Vessel identification.

(a) *Official number.* Each vessel of the

United States that takes brown shrimp, white shrimp, pink shrimp, or royal red shrimp in the Gulf of Mexico EEZ must:

4. Section 658.20 is revised to read as follows:

§ 658.20 Fishing year.

The fishing year for brown shrimp, white shrimp, and pink shrimp begins on May 1. The fishing year for royal red shrimp begins on January 1.

5. In § 658.21, paragraphs (a) and (b) are revised to read as follows:

§ 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp harvested from the EEZ is 111.6 metric tons. There are no domestic quotas for brown shrimp, white shrimp, or pink shrimp harvested from the EEZ.

(b) *State waters.* These regulations do not limit the harvest of brown shrimp, white shrimp, pink shrimp, or royal red shrimp in waters landward of the EEZ. However, harvests from waters landward of the EEZ are taken into account in the calculations of maximum sustainable yield and optimum yield for those shrimp species.

6. In § 658.25, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

§ 658.25 Texas closure.

(a) *Area and season restrictions.* From 30 minutes after sunset on May 15 to 30 minutes after sunset on July 6 the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The area is that part of the EEZ off Texas west of a line connecting point A at 29°32.1'N. latitude, 93°47.7'W. longitude, to point B at 26°11.4'N. latitude, 92°53.0'W. longitude (see Figure 4).

(b) *Adjustment of dates.* The Regional Director may adjust the closing and/or opening date to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days.

7. Section 658.26 is revised to read as follows:

§ 658.26 Size restrictions.

There are no minimum size restrictions for brown shrimp, pink shrimp, or royal red shrimp harvested in the EEZ. White shrimp harvested in the

EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

[FR Doc. 91-11774 Filed 5-16-91; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 910117-1017]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change in reporting requirements.

SUMMARY: The Regional Director, Alaska Region, NMFS (Regional Director) announces a requirement for submission of daily production reports from processors fishing for or receiving sablefish harvested with hook-and-line gear in the Central and Eastern Regulatory Areas and associated reporting areas of the Gulf of Alaska.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 15, 1991, until the end of the fishing year or until further notice.

ADDRESSES: Copies of the "Alaska Groundfish Processor Daily Production Report" forms may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, Fisheries Management Division, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the Exclusive Economic Zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR part 611.92 and 50 CFR part 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. Total allowable catch (TAC) amounts for target species and the "other species" category are specified annually within the OY range and are apportioned by subarea under § 675.20(a)(2)(i).

The initial 1991 TAC specified for

sablefish in the GOA was 22,500 mt, all of which was apportioned to domestic annual processing (DAP) (56 FR 8723; March 1, 1991). Sablefish TACs were assigned for each of the regulatory areas and districts to hook-and-line gear (19,350 mt) and trawl gear (3,150 mt) as follows:

Area/district	TAC (mt)	Hook-and-line share	Trawl share
Western	2,925	2,340	585
Central	10,575	8,460	2,115
Eastern:			
West Yakutat	4,050	3,850	200
Southeast Outside/East Yakutat	4,950	4,700	250
Total	22,500	19,350	3,150

Under § 672.23(a), directed fishing for sablefish with hook-and-line gear in the Gulf of Alaska is authorized beginning at noon, local time, on May 15, 1991. Ordinarily, NMFS would monitor sablefish harvests in this fishery through weekly domestic observer reports and weekly production reports submitted by groundfish processors under § 672.5(c)(2). These regulations require submission of the weekly production reports within 7 days of the end of the applicable weekly reporting period. Data entry, verification, and correction usually take another week, resulting in a delay of up to 2 weeks between the time of processing and the time the production information becomes available for TAC monitoring.

This procedure usually is adequate for monitoring groundfish TACs; however, this procedure is inadequate for the sablefish hook-and-line fishery in the Eastern and Central Regulatory Areas of the Gulf of Alaska. This fishery is fast-paced, has variable fishing effort, and has small TACs relative to the level of fishing effort. Sablefish harvests and production can outstrip the managers' capacity to monitor the fishery, resulting in inadvertent overharvests. Conversely, if fishing effort decreases unexpectedly, a fishery closure projected on production information from the weekly production reports may result in a premature closure, with unnecessary loss of revenue and increased costs to the groundfish fishing industry.

Recent changes to regulations for reporting and recordkeeping requirements (56 FR 9636; March 7, 1991) address this problem. Section 672.5(c)(3) now authorizes the Regional Director to require daily production reports from processor vessels and shoreside processing facilities that conduct fishing activity in, or receive groundfish from, any Gulf of Alaska reporting area. In

order to obtain timely production information from the sablefish hook-and-line fishery, as of noon, Alaska local time, May 15, 1991, the Regional Director is requiring daily production reports from processor vessels and shoreside processing facilities that process sablefish harvested with hook-and-line gear from all Gulf of Alaska Reporting Areas of the Central and Eastern Regulatory Areas (62, 621, 63, 64, 65, and 68). This requirement for daily production reports is an additional requirement effective until further notice, and does not suspend other applicable recordkeeping and reporting requirements.

Daily production reports must include all information required by § 672.5(c)(3)(ii) for sablefish harvested with hook-and-line gear from the applicable reporting areas. Processors must submit the required information on the "Alaska Groundfish Processor Daily Production Report" form available in the processors' recordkeeping reference manual or from the Regional Director at the address listed above. Processors must transmit their completed daily production reports to the Regional Director by facsimile transmission to number (907) 586-7131, or by telex (U.S. code) at 622-9600, no later than 12 hours after the end of the day that the sablefish was processed.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice.

This action is taken under § 672.5(c)(3) and is in compliance with Executive Order 12291.

The collection-of-information requirement contained in this notice was approved by the Office of Management and Budget (OMB) as a revision to OMB No. 0648-213 (56 FR 9636; March 7, 1991).

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 13, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11713 Filed 5-13-91; 4:41 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Secretary of Commerce (Secretary) announces that Greenland turbot is required to be treated in the same manner as prohibited species by vessels fishing in the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to prevent the total allowable catch (TAC) for Greenland turbot in the BSAI area from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving Greenland turbot stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 13, 1991, through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (MT) for all groundfish species in the BSAI management area. The TACs for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

Under § 675.20(a)(9), when the Regional Director determines that the TAC of any target species or of the "other species" category has been achieved prior to the end of a fishing year, the Secretary will publish a notice in the *Federal Register* requiring that species or the "other species" category be treated in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the fishing year. The 1991 TAC specified for

Greenland turbot in the BSAI is 5.950 mt, all of which was apportioned to domestic annual processing (DAP) (56 FR 6290, February 15, 1991).

The Regional Director has determined that the TAC for Greenland turbot for vessels in the BSAI will be reached on May 13, 1991. Therefore, under §§ 675.20(a)(6) and 675.20(c), the Secretary is prohibiting further retention of Greenland turbot by vessels in the BSAI and is requiring that Greenland turbot be treated in the same manner as prohibited species by vessels in the BSAI and discarded from noon, A.L.T.,

May 13, 1991, through the remainder of this fishing year.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. The TAC for Greenland turbot in the BSAI will be exceeded unless this notice takes effect immediately.

This action is taken under § 675.20

and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 13, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11714 Filed 5-13-91; 4:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 56, No. 96

Friday, May 17, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-91-283PR]

Proposed Expenses and Assessment Rate for the Marketing Order Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1991-92 fiscal year (August 1-July 31) under Marketing Order No. 905. These actions are needed so the Citrus Administrative Committee (committee) established under the marketing order can pay its expenses and collect assessments from handlers to pay those expenses. This proposed action would enable the committee to perform its duties and the marketing order to operate.

DATES: Comments must be received by June 17, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable citrus fruit handled from the beginning of such year. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee

members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons ($\frac{1}{4}$ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee recommended a budget with expenditures of \$210,000, for the 1991-92 fiscal year. The major expenditure items in the budget are for employee salaries and benefits, office operations, and the purchase of shipping information. These costs are generally slightly higher than those in the \$180,000 budget for 1990-91, reflecting inflationary pressures. A new \$20,000 item is included in the 1991-92 budget to fund committee travel expenses relating to member attendance at the Texas-Mexico Citrus Conference in 1992.

The committee also recommended a 1991-92 assessment rate of \$0.0025 per $\frac{1}{4}$ bushel carton of fresh fruit shipped. Assessment income for 1991-92 is expected to total \$150,000, based on estimated shipments of 60,000,000 cartons of assessable fruit. Interest income for 1991-92 is estimated at \$8,000. A deficit of \$52,000 is budgeted for 1991-92 and is intended to reduce the committee's reserve to more modest levels. The 1991-92 assessment rate is \$0.0009 lower than that established for 1990-91, reflecting an estimate that 1991-92 assessable shipments will be 10,000,000 cartons over the 1990-91 estimate.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers.

Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 905 be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 905.230 is added to read as follows:

§ 905.230 Expenses and assessment rate.

Expenses of \$210,000 by the Citrus Administrative Committee are authorized, and an assessment rate of \$0.0025 per ¼ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1992. Any unexpended funds from the 1990-91 fiscal year may be carried over as a reserve.

Dated: May 14, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11754 Filed 5-16-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 113 and 114

RIN-1515-AA22

Proposed Customs Regulations Amendments Relating to Duty-Free Stores

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to designate duty-free stores as a new class of Customs bonded warehouse, establish procedures for the administration of these facilities, and

incorporate duty-free store operating procedures into the regulations. These changes are necessary to implement section 1908 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418).

DATES: Comments must be received on or before July 16, 1991.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Pat Duffy or Mike Brengle, Office of Cargo Enforcement and Facilitation (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

Duty-free stores are Customs bonded warehouses operating under special procedures whereby merchandise is offered for sale to departing travelers without payment of Customs duties and taxes, on condition that the merchandise will be exported by and with them from the United States. These stores were first established in the late 1950's at airports in the United States and on land borders with Mexico and Canada. At present, there are approximately 125 duty-free stores operating throughout the United States, 43 of which are on the Canadian border, 33 at the Mexican border and 49 at U.S. international airports.

Duty-free stores have been administered since their inception through U.S. Customs administrative directives, rather than through any specific law or regulation. The Customs Service drafted regulations for the administration of duty-free stores in 1984. However, the draft regulations were never published as a Notice of Proposed Rulemaking, because Congress inserted a provision in Public Law 98-473 (Continuing Appropriations for Fiscal Year 1985) prohibiting the use of Customs funds made available by that Act or any other Act to propose or promulgate any rules or regulations relating to duty-free stores until Congress legislated in this matter. This provision was deemed by Customs to constitute a continuing prohibition in subsequent Customs appropriations unless it was specifically terminated. See 51 FR 24535 of July 7, 1986.

Congress did not legislate concerning duty-free stores until enactment of section 1908 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; August 23, 1988). Section 1908 amended section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) to authorize

the establishment and operation of duty-free stores in accordance with the provisions of the law and such regulations as the Secretary of the Treasury may prescribe.

In a recent development, a private firm has sought approval of a duty-free store for sales to passengers boarding cruise vessels at seaports. Unlike airport and land border locations, the Customs Service has never established any nationwide procedures for seaport duty-free stores. However, such stores are included within the meaning of the "border stores" under section 555(b)(8)(B), as recently amended.

To carry out the provisions of 19 U.S.C. 1555(b) and to regulate seaport duty-free stores, this rulemaking has been initiated. Some of the procedures in the proposal are carried over from the Customs administrative directives (Manual Supplement 3265-02 and Customs Directive 3260-04). Also, the regulations which apply to all bonded warehouses generally would, of course, continue to apply to duty-free stores unless specifically preempted by the proposed regulations. Duty-free stores approved by Customs as of August 23, 1988, shall be brought into compliance with the proposed regulations within 60 days after their approval in final form.

The principal features of section 1555(b) with respect to which implementing regulations are proposed are as follows:

1. Duty-free stores are authorized to be established anywhere within the port of entry from which a purchaser will depart or within 25 miles of the exit point of the purchaser from the United States.

2. Duty-free store operators will establish procedures to assure exportation of the merchandise. Sales by airport stores are restricted to personal-use quantities. There are no quantity restrictions on border sites.

3. Goods purchased in duty-free stores are not eligible for the personal exemption from duty if reimported. Customs may impose marking requirements to identify duty-free store merchandise upon reimportation, if there has been a pattern of undeclared reimportations.

4. Airport duty-free stores will deliver merchandise (1) to the purchaser in a sterile airport area, (2) to the purchaser at the exit point (gate holding area) of a departing flight, (3) to the aircraft, or (4) if any of the foregoing methods have failed ("no-show" passengers), by any other reasonable method to effect delivery for exportation.

5. Border duty-free store operators will deliver merchandise (1) to the purchaser beyond the exit point, or (2) to

the purchaser at any location approved by Customs before August 23, 1988 (date of enactment of the Trade Act).

6. Domestic or duty-paid goods may be brought into duty-free store bonded sales or crib areas for sale, but may not be placed in bonded storage areas. However, they must be marked to distinguish them from the duty-free merchandise.

In addition, regulations are proposed under the authority of section 1555(b) in the following areas:

1. Procedures for the operation of seaport duty-free stores are established.

2. The blanket permit procedures to withdraw merchandise from duty-free stores, as well as vessel and aircraft supply stores and diplomatic stores, currently allowed under Customs administrative directives, will not be authorized by regulation.

3. Sign, sales ticket, and recordkeeping requirements are established for duty-free stores.

4. The warehouse fee suspension authorized in section 9501 of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 58c) is acknowledged by deleting the regulatory section on warehouse fees.

5. Certain provisions applicable not only to duty-free stores, but also to other bonded warehouses are specifically referenced as being generally applicable to all bonded warehouses.

Proposal

In order to better administer the duty-free store program, Customs proposes to amend parts 19, 113, and 144, Customs Regulations (19 CFR parts 19, 113, and 144), in the following manner:

1. Establish duty-free stores as Class 9 Customs warehouses in section 19.1(a);

2. Revise § 19.2(a) to include documentation needed to support applications for new duty-free stores;

3. Merge § 19.2 (c) and (d) to specify the bond requirements of all new bonded warehouses, including Class 9 warehouses, upon approval of the warehouse application;

4. Revise § 19.3(e) to include a new ground for warehouse suspension or revocation specific to Class 9 warehouses;

5. Delete and reserve § 19.5;

6. Revise § 19.6(d) to allow for blanket permits upon entry acceptance for withdrawals of merchandise from duty-free stores, vessel and aircraft supply stores, and diplomatic stores, without further approval by Customs;

7. Amend § 19.11 by revising paragraph (c) and by adding a new paragraph (h) thereto to allow duty-free stores to unpack goods into saleable

units without the need for an application to and permit by Customs;

8. Revise § 19.12(a)(3) to allow the consolidation of duty payments owed on thefts and shortages from bonded warehouses;

9. Revise § 19.12(a)(4) to allow a proprietor of a bonded warehouse, including a duty-free store, to file the permit file folder with Customs within 30 days from the final withdrawal of the merchandise covered by the entry;

10. Add a new paragraph (a)(8) to § 19.12 to authorize the implementation of automated data processing systems by warehouse proprietors;

11. Add new §§ 19.35, 19.36, 19.37, 19.38 and 19.39 to set forth requirements for, limitations upon, and operating procedures for, duty-free stores;

12. Revise § 113.63 by adding a new paragraph (c)(5) to the custodial bond agreement wherein the proprietor agrees to provide reasonable assurance of exportation of duty-free store merchandise; and

13. Add a new paragraph (h) to § 144.37, setting forth the procedures governing withdrawals of merchandise from duty-free stores for exportation under a sales ticket procedure.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget (OMB) under 1515-0121, Establishment of Bonded Warehouses. Duty-free stores have long existed in this regard under established administrative practice. This notice of proposed rulemaking is intended to specifically include duty-free stores in the Customs Regulations as a separate class of bonded warehouse, and does not change the information collection burden with respect thereto.

The collection of information in this proposed revision is in §§ 19.2, 19.6, 19.11, 19.12, 19.36, 19.37, 19.38, 19.39 and 144.37. This information is necessary to assure the exportation of merchandise from duty-free stores, and to otherwise implement the requirements of law and protect the revenue. Comments concerning the accuracy of the existing burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Exports, Warehouses.

19 CFR Part 113

Customs bonds.

19 CFR Part 144

Customs duties and inspections, Imports, warehouse.

Proposed Amendment

It is proposed to amend parts 19, 113 and 144, Customs Regulations (19 CFR Parts 19, 113 and 144), as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The authority citation for part 19 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States, 1624;

§ 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

§ 19.6 also issued under 19 U.S.C. 1555;

§ 19.7 also issued under 19 U.S.C. 1555, 1556;

§ 19.11 also issued under 19 U.S.C. 1556, 1562;

§ 19.15 also issued under 19 U.S.C. 1311;

§§ 19.17–19.25 also issued under 19 U.S.C. 1312;

§§ 19.35–19.39 also issued under 19 U.S.C. 1555;

§ 19.40(a) also issued under 19 U.S.C. 1450, 1499, 1623;

§§ 19.41–19.43 also issued under 19 U.S.C. 1499;

§ 19.44 also issued under 19 U.S.C. 1448;

§ 19.45 also issued under 19 U.S.C. 1551, 1565;

§ 19.48 also issued under 19 U.S.C. 1499, 1623;

§ 19.49 also issued under 19 U.S.C. 1484.

2. It is proposed to amend § 19.1 by adding a new paragraph (a)(9) to read as follows:

§ 19.1 Classes of customs warehouses.

(a) * * *

(9) *Class 9.* Bonded warehouse known as "duty-free stores," used for selling, for use outside the Customs territory, conditionally duty-free merchandise owned or sold by the proprietor and delivered from the Class 9 warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the Customs territory for destinations other than foreign trade zones. Pursuant to 19 U.S.C. 1555(b)(8)(C), "Customs territory", for purposes of duty-free stores, means the Customs territory of the U.S. as defined in § 101.1(e) of this chapter, and foreign trade zones (see Part 146 of this chapter).

3. It is proposed to amend § 19.2 by removing the paragraph designations for paragraphs (b)(1), (2), and (3); by adding a phrase at the end of the introductory text of paragraph (b) and adding new paragraphs (1), (2), (3), and (4); by revising paragraph (c), and by removing and reserving paragraph (d) as follows:

§ 19.2 Applications to bond; annual fee.

* * * * *

(b) * * * If the application is for a Class 9 warehouse (duty-free store), the applicant shall furnish the following documents:

(1) A map showing the location of the facilities to be bonded in respect to the port of entry and distances to all exit points of purchasers of conditionally duty-free merchandise;

(2) A description of the store's procedures to provide reasonable

assurance that conditionally duty-free merchandise sold therein will be exported;

(3) If an airport duty-free store, a description of the store's procedures for restricting sales of conditionally duty-free merchandise to personal-use quantities; and

(4) A statement by an authorized official of the appropriate state, local, or other governmental authority administering the exit point facility that the applicant duty-free store is authorized to deliver conditionally duty-free merchandise to purchasers at or through that exit point facility. A separate statement shall be required for each governmental authority having jurisdiction over exit point facilities through which the duty-free store intends to deliver merchandise to purchasers. If the merchandise will be delivered through an exit point which is not under the jurisdiction of a governmental authority, the applicant will provide a statement to that effect.

(c) On approval of the application to bond a warehouse of any class, except Class 1, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(d) [Reserved].

* * * * *

4. It is proposed to amend § 19.3 by adding a new paragraph (e)(9) as follows:

§ 19.3 Bonded warehouse; alterations; relocations; suspensions; discontinuance.

* * * * *

(e) * * *

(9) The proprietor of a Class 9 warehouse is or has been unable to provide reasonable assurance that conditionally duty-free merchandise is or was exported in compliance with the regulations in this part.

* * * * *

§ 19.5 [Removed]

5. It is proposed to delete and reserve § 19.5.

6. It is proposed to amend § 19.6 by revising the section heading and paragraph (d) to read as follows:

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

* * * * *

(d) *Blanket permits to withdraw.* (1) *General.* Blanket permits may be used to withdraw merchandise in small quantities from bonded warehouses for:

(i) delivery to individuals departing directly from the Customs territory for exportation under the sales ticket

procedure of § 144.37(h) of this chapter (Class 9 warehouses only);

(ii) aircraft or vessel supplies under sections 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317); or

(iii) the personal or official use of personnel of foreign governments and international organizations set forth in subpart I, part 148 of this chapter; or

(iv) a combination of the foregoing.

Blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit shall state in capital letters on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that "Some or all of the merchandise will be withdrawn under blanket permit per section 19.6(d) C.R." Customs acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the district director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation Customs is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144 of this chapter.

(2) *Withdrawals under blanket permit.* Withdrawals may be made under blanket permit without any further Customs approval, and shall be documented by placing a copy of the withdrawal document in the proprietor's permit file folder. Each withdrawal shall be filed on Customs Form 7506 or 7505, as appropriate, and shall be consecutively numbered, prefixed with the letter "B". The withdrawal shall specify the quantity and value of each type of merchandise to be withdrawn. Each copy shall bear the summary statement described in § 144.32(a) of this chapter, reflecting the balance of merchandise covered by the warehouse entry. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a supplementary withdrawal shall be made on the copy and reported to the district director as provided in

paragraph (b)(1) of this section. A copy of the withdrawal shall be retained in the records of the proprietor as provided in § 19.12(a)(2) of this part. Merchandise shall not be removed from the warehouse prior to the preparation of the supplementary withdrawal. If merchandise is so removed, the proprietor shall be subject to liquidated damages as if it were removed without Customs permit.

(3) *Withdrawals under blanket permit from duty-free stores.* Withdrawals under blanket permit from duty-free stores shall be made on the sales ticket described in § 144.37(h) of this chapter. The sales ticket need not contain the summary statement described in § 144.32(a) of this chapter, since the information required is included in the sales ticket register. The sales ticket shall be serially numbered as provided in § 144.37(h)(2) of this chapter.

(4) *Blanket permit summary.* When all of the merchandise covered by an entry on which a blanket permit to withdraw was issued has been withdrawn, including withdrawals made for purposes other than duty-free store delivery, vessel or aircraft supply, or diplomatic use, the proprietor shall prepare a report on a copy of Customs Form 7506, or a form on the letterhead of the proprietor, which provides an account of the disposition of the merchandise covered by the blanket permit. The form shall bear the words "BLANKET PERMIT SUMMARY" in capital letters conspicuously printed or stamped in the top margin. On the form, the proprietor shall certify that the merchandise listed thereunder was withdrawn in compliance with § 19.6(d), and shall account for all of the merchandise withdrawn under blanket permit by HTSUS (Harmonized Tariff Schedule of the United States) number, HTSUS quantity (where applicable) and value. If applicable, the account shall separately list and identify merchandise withdrawn for

(1) Duty-free store exportation,

(2) Vessel or aircraft supply use, and

(3) Personal or official use of persons and organizations set forth in subpart I, part 148, of this chapter.

If all of the merchandise was withdrawn under the sales ticket procedure of § 144.37(h) of this chapter, the sales ticket register may be substituted for the blanket permit summary. The form will be placed in the permit file folder and treated as provided in § 19.12(a) of this part.

7. It is proposed to amend § 19.11 by revising the first sentence of paragraph (c), removing the fourth sentence of

paragraph (d), and revising paragraph (d), and by adding a new paragraph (h), to read as follows:

§ 19.11 Manipulation in bonded warehouses and elsewhere.

(c) Warehouse proprietors shall not allow manipulation of any merchandise without a prior permit issued by the district director, except as provided in paragraph (h) of this section. * * *

(d) The application to manipulate, which shall be filed on Customs Form 3499 with the district director having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the district director to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of section 562, Tariff Act of 1930, as amended. If the district director is satisfied that the merchandise is to be so manipulated, he may issue a permit on Customs Form 3499, making any necessary modification in such form. The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such section 562.

(h) Merchandise which has been entered for warehouse and placed in a Class 9 warehouse (duty-free store) may be unpacked into saleable units without a prior permit issued by the district director. The district director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found upon receipt to be nonsaleable, if the merchandise to be

destroyed is valued at less than \$100 per entry, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

8. It is proposed to amend § 19.12 by revising paragraph (a)(2), adding two sentences to the end of paragraph (a)(3), by revising paragraph (a)(4), and by adding a new paragraph (a)(8), to read as follows:

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) * * *

(2) *Maintain permit file folders.*

Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals, and blanket permit summaries within two business days after the event occurs.

(3) *Theft, shortage, overage or damage.* * * * The applicable duties and taxes on thefts and shortages so reported shall be paid by the responsible party to Customs within 10 working days after discovery. The district director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment.

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall:

(i) Review the permit file folder to insure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry,

(ii) Notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed, and

(iii) File the permit file folder with Customs within 30 business days after final withdrawal.

* * * * *

(8) *Automated operating and inventory control systems.* The district director may authorize the implementation by a proprietor of automated data processing systems for operating and inventory control purposes if they are in support of Customs procedural requirements and do not adversely affect Customs

supervision and control of warehouse activities and transactions.

9. It is proposed to amend part 19, Customs Regulations, by adding after § 19.34, a new center heading entitled "Duty-Free Stores" and new §§ 19.35, 19.36, 19.37, 19.38, and 19.39, to read as follows:

Duty-Free Stores

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).

§ 19.36 Requirements for duty-free store operations.

§ 19.37 Crib operations.

§ 19.38 Supervision of exportation.

§ 19.39 Delivery to persons for exportation.

Duty-Free Stores

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).

(a) *General.* A Class 9 warehouse (duty-free store) may be established for exportation of conditionally duty-free merchandise by individuals departing the customs territory, inclusive of foreign trade zones, by aircraft, vessel, or departing directly by vehicle or on foot to a contiguous country. Such articles must accompany the individual on his person or in the same aircraft, vessel, or vehicle in which the individual departs. "Conditionally duty-free merchandise" means merchandise sold by a duty-free store on which duties and/or internal revenue taxes (where applicable) have not been paid. Except insofar as the provisions of this section and §§ 19.36-19.39 are more specific, the procedures for bonded warehouses apply to duty-free stores (Class 9 warehouses).

(b) *Location.* A Class 9 warehouse may be established or located only (1) within the same port of entry from which a purchaser of duty-free store merchandise departs the customs territory, or (2) within 25 statute miles from the exit point through which the purchaser of duty-free store merchandise departs the customs territory.

(c) *Integrated locations.* A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise will be treated by Customs as one location if (1) the proprietor can provide Customs upon demand with the proper on-hand balance of each inventory item in each storage location, sales room, crib, mobile crib, delivery cart, or other conveyance or noncontiguous location, and (2) the recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce

the sale quantity by location from the centralized inventory.

(d) *Exit point.* The exit point referred to in paragraph (b) of this section means the area in close proximity to an actual exit for departing from the Customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that conditionally duty-free merchandise delivered in the gate holding area will be exported from the Customs territory. The exit point in the case of a land border or seaport duty-free store is the point at which a departing individual has no practical alternative to continuing on to a foreign country or to returning to Customs territory without passing through a U.S. Customs inspection facility. The district director's decision as to what constitutes the exit point or reasonable assurance of exportation in a given situation is final.

(e) *Notice to customers.* Class 9 warehouse proprietors shall display in prominent places where they will be noticed and read by customers signs which state clearly that any conditionally duty-free merchandise purchased from the store:

(1) Has not been subjected to any U.S. Federal duty or tax;

(2) If brought back to the United States must be declared and is subject to U.S. Federal duty and tax without personal exemption; and

(3) Is subject to the Customs laws and regulations, including possible duties and taxes, of any foreign country to which it is taken.

(f) *Security of sales rooms and cribs.* The physical and procedural security requirements of § 19.12(b)(3) of this part shall be applied by the district director so as to accommodate the movement of purchasers and prospective purchasers of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

(g) *Approval of governmental authority.* If a state or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free store under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn for exportation and transferred to or through such facility unless the operator of the duty-free store demonstrates to the district director that the concession or approval required for the enterprise has been obtained.

§ 19.36 Requirements for duty-free store operations.

(a) *Withdrawals.* Merchandise withdrawn under the sales ticket procedure in § 144.37(h) of this chapter may be delivered only to individuals departing from the Customs territory for exportation or to persons and organizations for use as specified in subpart I, part 148, of this chapter. Withdrawals of other kinds may be made from Class 9 warehouses, but only through separate withdrawals (or withdrawals under blanket permit for vessel or aircraft supplies) under an approved permit of the district director as provided in § 144.39 of this chapter.

(b) *Procedures required.* Each duty-free store shall establish, maintain, and follow written procedures to provide reasonable assurance to the district director that conditionally duty-free merchandise purchased therein will be exported from the Customs territory. A copy of any change in the procedure will be provided to the district director before it is implemented. However, receipt by Customs of the procedures or of any change thereto shall not be construed as approval by Customs of the procedures. The district director is responsible for insuring that each enterprise has established guidelines with Customs and is complying with those guidelines, giving assurance that proper supervision exists when delivery is made to the purchaser at or before the exit point. The district director may at any time require any change in the procedures deemed necessary for assurance of exportation.

(c) *Personal-use restrictions.* Any duty-free store which delivers conditionally duty-free merchandise to purchasers at an airport exit point shall establish, maintain, and enforce written restrictions on the sale of conditionally duty-free merchandise to any one individual to personal-use quantities. Personal-use quantities means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others. Proprietors will not knowingly sell or deliver conditionally duty-free merchandise in any quantity to any individual for the purpose of resale. A copy of the restrictions and of any change thereto shall be provided to the district director prior to implementation. However, receipt of the written restrictions by Customs shall not be construed as approval by Customs of the restrictions. The district director may require any change in the restrictions deemed necessary to

conform to the personal-use quantity restriction of this section.

(d) *Reimported merchandise.* Merchandise purchased in a duty-free store is not eligible for exemption from duty, or tax where applicable, under chapter 98, subchapter IV, Harmonized Tariff Schedule, if it is brought back to the United States after exportation. To enforce this restriction, the district director may require the proprietor to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate the items were sold in a U.S. duty-free store, if a pattern is disclosed in which such items are being brought back to the United States without declaration. A pattern of undeclared reimportations means a number of instances over a period of time and not isolated instances of unrelated violations. Any such marking required by the district director will be inconspicuous to the purchaser and will not detract from the value of the merchandise. The marking requirement will be limited to the items or types of merchandise noted in the pattern, and will not be extended to all merchandise of the store unless all or most items are part of the pattern.

(e) *Merchandise eligible for warehousing.* Only conditionally duty-free merchandise may be placed in a bonded storage area of a Class 9 warehouse. However, domestic merchandise and merchandise which was previously entered or withdrawn for consumption, and which are not fungible with conditionally duty-free merchandise, may be brought into the bonded sales or crib area of a Class 9 warehouse for display and sale, and in the case of a crib, for delivery to purchasers. However, such merchandise must be marked "DUTY-PAID" or "U.S. ORIGIN", or with similar markings, as applicable, for easy distinction by Customs officers and purchasers of conditionally duty-free merchandise from other merchandise in the sales or crib area.

(f) *Sale of merchandise.* Conditionally duty-free merchandise for exportation at airport or seaport exit points may be sold and delivered only to purchasers who display valid tickets for departure from the Customs territory, and crewmembers who have been engaged for a flight or voyage departing directly from the Customs territory.

(g) *Inventory procedure.* Duty-free store proprietors shall maintain a current inventory separately for each storage area, crib, and sales area containing conditionally duty-free merchandise by warehouse entry, or by unique identifier where permitted by the district director. The inventory shall be

reconcilable with the accounting and inventory records and the permit file folder requirements of § 19.12(a) (1) and (2), of this part. Proprietors are subject also to the recordkeeping requirements of other paragraphs of § 19.12, as well as those of §§ 19.6(d), 19.37(d), 19.39(d) of this part, and 144.37(h)(3) of this chapter.

§ 19.37 Crib operations.

(a) *Crib.* A "crib" means a bonded area, separate from the storage area of a Class 9 warehouse, for the retention of a small supply of articles for delivery to persons departing from the United States. It shall be located beyond the exit point, unless exception has been made under § 19.39(b) of this part. The crib may be a permanent location or a mobile facility which is periodically moved to a location beyond the exit point. The quantity of goods in the crib shall be limited to two weeks' supply. However, the district director may raise or lower the quantity as he deems necessary for the protection of the revenue and proper administration of U.S. laws and regulations, or he may order the return to the storage area of goods remaining unsold.

(b) *Delivery and removal of merchandise.* Conditionally duty-free merchandise shall be delivered to the crib, or removed from the crib for return to the storage area, under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the district director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse. If delivery is made by licensed cartman, cartage vehicles shall be conspicuously marked as provided in § 112.27 of this chapter.

(c) *Delivery vehicles.* Vehicles, including mobile cribs, containing conditionally duty-free merchandise for delivery to or from a crib shall carry a listing of the articles contained therein. The proprietor shall provide, upon request by Customs, a transfer document sufficient to account for each movement of inventory among its locations. The merchandise in the vehicles shall be subject to inspection by Customs.

(d) *Retention of records.* Class 9 warehouse proprietors shall maintain records at the duty-free store of conditionally duty-free merchandise transported beyond the exit point and returned therefrom, and Customs permits for such movements, for not less than 5 years after exportation of the articles. Such records need not be placed in permit file folders but must be filed by date of movement and destination site.

§ 19.38 Supervision of exportation.

(a) *Sales ticket withdrawals.* Conditionally duty-free merchandise withdrawn under the sales ticket procedure for exportation shall be exported only under Customs supervision as provided in this section and § 19.39 of this part. General Customs supervision shall be exercised as provided in §§ 19.4 of this part and 161.1 of this chapter, and may consist of spot checks of exportation transactions, examination of articles being exported, and audits of the proprietor's records.

(b) *Supervision of ATF bonded exports.* Customs officers may conduct general supervision of exportations of cigarettes and cigars from ATF export bonded warehouses (see 27 CFR part 290) in conjunction with exportation from duty-free stores.

§ 19.39 Delivery to persons for exportation.

(a) *Delivery to land border locations.* (1) *Land border locations.* "Land border location" means an exit point from which individuals depart to a contiguous country by vehicle or on foot by bridge, tunnel, highway, walkway, or by ferry across a boundary lake or river, but not including departure to a contiguous country by air or sea. Deliveries from a duty-free store for exportation from such locations shall be made to the purchaser only beyond the exit point, except as specified in paragraph (a)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point of any location approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as outlined in § 19.36(b) of this part. The officer, or an authorized representative of the supervising independent party, shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The district director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(b) *Delivery to seaport locations.* (1) *Seaport location.* "Seaport location" means an exit point from which conditionally duty-free merchandise is delivered to departing individuals for exportation by vessel of more than 5 net tons which is departing directly from the Customs territory to touch and trade in a foreign country. Deliveries for exportation from such locations may be made only beyond the exit point, except

as specified in paragraph (b)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point in the case of any locations approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as outlined in § 19.36(b) of this part. The officer, or an authorized official of the supervising independent party, shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The district director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(c) *Delivery to airport locations.* "Airport locations" means an exit point from which conditionally duty-free merchandise is delivered to departing individuals for exportation on a scheduled, chartered, or "for hire" airline. Delivery of conditionally duty-free merchandise to be exported from such locations may be made by one of the following five procedures:

(1) *Delivery in sterile area.* A sterile area is an area that is within the airport and to which access is restricted to those passengers departing from Customs territory. In such cases, delivery will be made directly to the purchaser (or a family member or companion travelling with the purchaser) for carrying aboard the aircraft. This method of delivery is not authorized if there is any mixture in the sterile area of individuals arriving from a foreign country, or individuals arriving or departing on a domestic flight, with individuals departing for foreign.

(2) *Passenger delivery.* Merchandise may be delivered by the cartman or duty-free store operator to the purchaser (or a family member or companion travelling with the purchaser) at or beyond the exit point for the flight. The district director may require the exit point to be delimited by marking of its boundaries, or require proper supervision as outlined in the guidelines established in accordance with § 19.36(b) of this part, if needed for reasonable assurance that conditionally duty-free merchandise will be exported with the purchaser or a family member or companion. A certificate of lading shall be prepared by the proprietor for each shipment of conditionally duty-free merchandise and executed by an authorized airline official, certifying that the merchandise has been laden on a particular aircraft for exportation. After execution, the certificate will be

returned to the duty-free store proprietor for filing. The certificate shall include the following information: Warehouse entry number (or unique identifier, if permitted by the district director); aircraft departure date; airline flight number; and total quantity delivered to the flight.

(3) *Aircraft delivery.* The merchandise will be delivered by a licensed cartman for lading directly on the aircraft. An authorized representative of the airline will sign for receipt of the merchandise on a lading manifest (see paragraph (c)(4)(iii) of this section). The airline will release the merchandise to the purchaser when the aircraft has departed for its foreign destination, and return the receipt copy to the proprietor.

(4) *Unit-load delivery.* Merchandise may be sold to passengers departing from the United States at a prior port of boarding on flights proceeding to a foreign destination which are required to clear with intermediate stops in the United States, provided that all the following conditions are met:

(i) Sales may be made only to passengers holding a through ticket on the same flight, with not stopover privileges, to a foreign destination;

(ii) Merchandise shall be placed in a container sealed with Customs seals. The sealed container(s) may be placed in the baggage compartment or on the passenger deck of the aircraft. Containers stowed in baggage compartments may, with Customs permission, be transferred to the passenger deck at an intermediate or final stop in the United States. The seal numbers shall be placed on the face of the aircraft general declaration;

(iii) A lading manifest list, in duplicate, of conditionally duty-free merchandise sold to passengers aboard the particular flight will be prepared by the proprietor. An authorized airline representative will sign for receipt, with one copy to be retained by the airline for presentation to Customs as requested at the intermediate or final port, and the duplicate copy to be returned to and retained by the proprietor for record purposes;

(iv) The seals shall not be broken nor shall any of the purchases be delivered until the aircraft is secured for departure to its foreign destination at the last port. In the event that the seals are broken before that time, or the merchandise is not exported for any reason and not returned to Customs custody, demand shall be made against the importation and entry bond of the importer of record.

(5) *Cancelled or aborted flights or "no show" purchasers.* If the proprietor has

made a good faith effort to effect delivery for exportation through one of the methods specified in paragraph (c) (1) through (4) of this section, but is unable to do so for reasons beyond the proprietor's control, the proprietor may deliver the conditionally duty-free merchandise by any other method deemed reasonable by the district director. Written procedures for delivery for exportation, specifying responsibilities for any discrepancies which might occur, shall be established by the proprietor and provided to the district director. The district director may require any change in procedure deemed necessary to assure exportation under specific circumstances.

(6) *Sales to crewmembers.* The sale or delivery of conditionally duty-free merchandise to crewmembers is allowed only on flights proceeding directly to a foreign destination with no intermediate stops in the United States.

(d) *Lading manifest lists; certificate of exportation.*

The proprietor shall retain copies of lading manifest lists and certificates of lading for exportation in its files at the duty-free store for not less than 5 years after exportation.

(e) *Delivery method.* Delivery of conditionally duty-free merchandise to persons for exportation will be made by licensed cartmen under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the district director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse.

(f) *Return of merchandise to stock.* Whenever merchandise is withdrawn under the sales ticket procedure of § 144.37(h) of this chapter, but is undeliverable or is rejected by the purchaser, the merchandise may be returned to the duty-free store and the records, including the sales ticket and sales ticket register, amended to reflect the quantity returned to stock. Written procedures for the return of merchandise to stock, specifying responsibilities for any discrepancies which might occur, shall be established by the proprietor and provided to the district director. The district director may require any change in procedure deemed necessary to assure that the merchandise is not diverted into commerce.

PART 113—BONDS

1. The authority citation for part 113 would continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. It is proposed to amend § 113.63 by adding a new paragraph (c)(5) thereto as follows:

§ 113.63 Basic custodial bond conditions.

(c) *Disposition of merchandise.* * * *

(5) In the case of Class 9 warehouses, the proprietor will provide reasonable assurance of exportation of merchandise withdrawn under the sales ticket procedure of § 144.37(h) of this chapter.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for part 144 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624. Section 144.3 also issued under 19 U.S.C. 1563; Section 144.33 also issued under 19 U.S.C. 1562; Section 144.37 also issued under 19 U.S.C. 1555, 1562.

2. It is proposed to amend § 144.37 by adding a new paragraph (h) to read as follows:

§ 144.37 Withdrawal for exportation.

(h) *Class 9 warehouse withdrawals for exportation.*

(1) *Applicability of sales ticket procedure.* Merchandise in a Class 9 warehouse (duty-free store) may be withdrawn for any of the purposes set forth in this subpart. However, only conditionally duty-free merchandise in a Class 9 warehouse intended for exportation or for delivery to persons and organizations as set forth in subpart I, part 148, of this chapter, will be eligible for withdrawal under the sales ticket procedure specified in this paragraph.

(2) *Sales ticket content and handling.* Sales ticket withdrawals shall be made only under a blanket permit to withdraw (see § 19.6(d) of this chapter) and the sales ticket shall serve as the equivalent of the supplementary withdrawal. A sales ticket is an invoice of the proprietor's design which will include:

- (i) Serial number and date of preparation of each ticket;
- (ii) Warehouse entry number or specific identifier, if approved by the district director;
- (iii) Quantity of goods sold;
- (iv) Brief description of the articles including the size of bottles;
- (v) The full name, address and signature of the purchaser. However, the district director may waive the address

and signature requirement (but not the name requirement) for alcoholic beverages in quantities of 4 liters or less and cigarettes in quantities of 3 cartons or less; and

(vi) A statement on the original copy (purchaser's copy) to the effect that goods purchased in a duty-free store will be subject to duty and/or tax without personal exemption if returned to the United States.

At the time of purchase, the sales ticket, in triplicate, shall be made out in the name of the purchaser. One copy shall be retained by the proprietor. A permit file copy will be attached to the parcel containing the purchaser. Additional copies may be retained by the proprietor.

(3) *Sales ticket register.* In addition to the records required in § 19.12(a) of this chapter, Class 9 warehouse proprietors shall maintain a sales ticket register or similar accounting record for each warehouse entry. This sales ticket register of the proprietor shall include the following information:

- (i) Warehouse entry number;
- (ii) Specific identifier, if applicable;
- (iii) Sales ticket date and number;
- (iv) Description;
- (v) Quantity; and
- (vi) Current balance.

As each warehouse entry is closed out, the warehouse proprietor shall verify the sales ticket register total with the amount withdrawn so as to account for all merchandise so withdrawn and certify on the register that all the goods have been exported or sold to qualifying persons and organizations under part 148 of this chapter. The sales ticket register shall be included in the permit file folder with or in lieu of the blanket permit summary, as provided in § 19.6(d)(4) of this chapter. A copy of all sales tickets shall be retained by the proprietor for not less than 5 years after the last date of the last sales ticket in the entry. In lieu of placing a copy of sales tickets in each permit file folder, the warehouse proprietor may keep all sales tickets in a separate file in numerical sequence by warehouse entry number.

Carol Hallett,
Commissioner of Customs.

Approved: May 9, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 91-11747 Filed 5-16-91; 8:45 am]

BILLING CODE 4820-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-133, RM-7710]

Radio Broadcasting Services; Wickenburg, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Circle S Broadcasting Co., Inc., seeking the allotment of Channel 229A to Wickenburg, Arizona, as that community's second local FM service. Coordinates for this proposal are 33-55-53 and 112-48-12. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before July 1, 1991, and reply comments on or before July 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Circle S Broadcasting Co., Inc., Attn.: Harold R. Shumway, President, P.O. Drawer Y, Wickenburg, AZ 85358.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-133, adopted April 29, 1991, and released May 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11697 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-135, RM-7697]

Radio Broadcasting Services; Boonville and Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Big Country of Missouri, Inc., requesting the allotment of FM Channel 230A to Boonville, Missouri, as that community's second FM broadcast service. The coordinates for Channel 230A are 38-58-56 and 92-36-09. There is a site restriction 11.5 kilometers (7.2 miles) east of the community. To accommodate the allotment at Boonville, we shall propose to substitute Channel 272A for vacant but applied for Channel 230A at Columbia, Missouri, without a site restriction, at coordinates 38-57-24 and 92-19-48. The three applications on file for Channel 230A at Columbia have been designated for hearing. The applicants will be served with a copy of the Notice.

DATES: Comments must be filed on or before July 1, 1991, and reply comments on or before July 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frederick A. Polner, Richard K. Olson, Jr., Rothman Gordon Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, Pennsylvania 15219, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rule Making, MM Docket No. 91-135, adopted April 29, 1991, and released May 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11698 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-134, RM-7708]

Television Broadcasting Services; Wailuku, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KFVE Joint Venture proposing the allotment of Television Channel 39 to Wailuku, Hawaii, as that community's sixth local television service. The allotment can be made in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this proposed allotment are North Latitude 20-53-24 and West Longitude 156-30-24.

This proposal is not affected by the freeze on television allotments or applications.

DATES: Comments must be filed on or before July 1, 1991, and reply comments on or before July 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robyn G. Nietert, Eric S. Kravetz, Brown, Finn & Nietert, Chartered, 1920 N Street NW., Suite 660, Washington, DC 20036 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-134 adopted April 29, 1991, and released May 10, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11696 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 56, No. 96

Friday, May 17, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee and the Delaware Advisory Committee

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania and Delaware Advisory Committees to the Commission will be convened at 9:30 a.m. on Friday, June 14, 1991, in the Public Information Meeting Room of the Federal Reserve Bank of Philadelphia Building, 100 North 7th Street, Philadelphia, and adjourn at noon.

The purposes of the meeting are to review and act upon the draft of a report on a joint project examining Recent Decisions of the Supreme Court and the Proposed Civil Rights Act and to adopt Fiscal Year 1992 projects for Pennsylvania and Delaware

Persons desiring additional information, or planning a presentation to the Advisory Committees, should contact Pennsylvania Chairperson Susan M. Wachter (215/647-1042), Delaware Chairman Henry A. Heiman (302/658-1800), or Eastern Regional Division Director John I. Binkley at (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, May 8, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 91-11741 Filed 5-16-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Procedure for Voluntary Self-Disclosure of Violations of the Export Administration Regulations.

Form Number: Agency—EAR § 787.15, OMB Control No. 0694-0058.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 75 respondents; 750 reporting hours.

Needs and Uses: This information is needed to detect violations of the Export Administration Act and Regulations, to determine if an investigation or prosecution is necessary and to reach settlements with violators. The respondents are likely to be export-related businesses.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-11740 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket 26-91]

Foreign-Trade Zone 159-St. Paul, Alaska Request to Remove Time Limit

The City of St. Paul, Alaska, Grantee of FTZ 159, has submitted a request to the Foreign-Trade Zones Board (the Board) to remove the 1-year time limit in the original grant of authority (Board Order 436, 54 FR 31356, 7/28/89) for its foreign-trade zone at the City of St. Paul, Alaska, a Customs user fee airport. The time limit was imposed because of the issue of reimbursability at airports with Customs user fee status. The grantee bases its request on Public Law 101-207 (signed on December 7, 1989), which it indicates resolves the reimbursability issue.

The request was formally filed on April 22, 1991. Comments concerning the request are invited in writing from interested parties until May 31, 1991. A copy of the request is available at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: May 10, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-11780 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 27-91]

Foreign-Trade Zone 56—Oakland, California Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Oakland, California, grantee of Foreign-Trade Zone 56, requesting authority to relocate and expand its general-purpose zone in Oakland. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 9, 1991.

FTZ 56 was approved on April 18, 1980 (Board Order 155, 45 FR 27802, 4/24/80). It currently involves 8 acres at 633 Hegenberger Road, Oakland, and 185,000 square feet of general-purpose zone warehousing space at the Oakland

Commerce Center (OCC), 9401 San Leandro Street, Oakland.

The grantee is now requesting authority to relocate the entire zone project to the OCC complex, which covers 20 acres and has 500,000 square feet of warehousing space. OCC is owned and operated by Pacific American Warehousing and Trucking Company. No manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul R. Andrews, District Director, U.S. Customs Service, Pacific Region, 555 Battery Street, San Francisco, California 94128; and Colonel Stanley G. Phernambucq, U.S. Army Engineer District San Francisco, 211 Main Street, San Francisco, California 94105-1905.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 1, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Federal Building, room 15205, Box 6013, 450 Golden Gate Avenue, San Francisco, California 94102.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 10, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-11781 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-703]

Granular Polytetrafluoroethylene Resin from Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy for the period August 1, 1989 through July 31, 1990. The review covers one manufacturer/exporter of this merchandise to the United States, Montefluos, S.p.A. We preliminary determine the weighted-average dumping margin to be 24.02 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1990, the Department of Commerce (the Department) published in the *Federal Register* a notice of "Opportunity to Request Administrative Review" (55 FR 32279) of the antidumping order on granular polytetrafluoroethylene resin (PTFE) from Italy (53 FR 33163; August 30, 1988). On August 23, 1990, Montefluos, S.p.A., a manufacturer/exporter, requested an administrative review of the order for the period August 1, 1989 through July 31, 1990. On August 24, 1990, the petitioner, E.I. Du Pont de Nemours & Company, Inc., also requested an administrative review of Montefluos, S.p.A. for the same period. We initiated the review on September 24, 1990 (55 FR 39032). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the *Federal Register* on December 11, 1990 (55 FR 50854).

Imports covered by this review are shipments of granular polytetrafluoroethylene resin, filled and unfilled. Such merchandise is classifiable under Harmonized Tariff Schedule (HTS) item number 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Italian PTFE to the United States, Montefluos, S.p.A., and the period August 1, 1989 through July 31, 1990.

United States Price

The Department based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Tariff Act. We calculated ESP based on the packed, delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, brokerage and handling charges, U.S. duty, U.S. inland freight, credit expenses, and other U.S. selling expenses pursuant to 19 U.S.C. 772(e) (1) and (2).

Foreign Market Value

In calculating foreign market value, the Department used home market prices, as defined in section 773(a) of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Where possible, we compared sales of identical merchandise in the two markets. When identical merchandise was not sold in the home market, we based our comparison on the most similar merchandise and, where applicable, we made an adjustment for differences in merchandise. Foreign market value was based on the packed, delivered prices to unrelated purchasers in Italy, with appropriate deductions for inland freight and insurance, discounts, rebates and credit. We also made adjustments, where applicable, for differences in packing. We deducted indirect selling expenses incurred on home market sales up to the amount of U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminary determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Period	Margin (Percent)
Montefluos S.p.A.....	08/01/89-07/31/90	24.02

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit

of estimated antidumping duties based on the above margin will be required for Montefluos S.p.A.

For all other manufacturers/exporters of this merchandise not covered in this or prior administrative reviews, the cash deposit rate shall be 24.02 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-11782 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT:

George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the *Federal Register* identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 91-00004." A summary of the application follows.

Summary of the Application

Applicant: Oregon ETC Inc. (ETC), 1211 SW. 5th Avenue, suite 1800, Portland, Oregon 97204.

Contact: Kirk Johansen or Carmen Calzacorta, Schwabe, Williamson & Wyatt, ETC Counsel, Telephone: (503) 222-9981.

Application No.: 91-00004.

Date deemed submitted: May 2, 1991.

Members (in addition to applicant): Avison Lumber Co., Molalla, OR; Douglas County, Inc., Winchester, OR; and Vanport Manufacturing, Inc., Boring, OR.

Export Trade

Products: Forest products, including all sizes and grades of timbers and lumber, rough or surfaced, of all softwood species.

Export trade facilitation services (as they relate to the export of products: Consulting; international market

research; advertising and sales promotion; trade show participation; marketing; selling; brokering; insurance; product research and design; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of sales leads and export orders; warehousing; foreign exchange; financing; taking title to goods; services related to compliance with customs requirements; and liaison with foreign governmental agencies, trade associations, and bank institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. ETC may bid for the sale of, and contract to sell, Products to buyers in the Export Markets;
2. ETC may obtain quotes and purchase Products from its Members, and from other domestic Suppliers individually, for the sole purpose of exporting to buyers in the Export Markets;
3. Upon receiving or anticipating a request from a buyer in the Export Markets for the price of Products, ETC may ask one or more of its Members or other domestic Suppliers individually to supply a price quotation to ETC for the Products, aggregate the price and supply data received, add its own markup or percentage commission to the price, and transmit a price quotation based on such price and markup or commission to the foreign buyer;
4. Upon placement of an order by a buyer in the Export Markets, ETC may purchase and ship Products to the buyer;
5. ETC may provide Export Trade Facilitation Services to its Members and individually to other domestic Suppliers;
6. ETC may prohibit its Members from selling, assigning, or placing any other encumbrance or lien upon their shares in ETC;
7. ETC and its Members may enter into agreements, and ETC may enter into agreements with the Suppliers, to provide Products or Export Trade Facilitation Services wherein ETC may agree not to represent any competitor of the Members or Suppliers in the Export Markets; and the Members remain free to sell the Products, directly or through

other channels, in the Export Markets. These agreements may also give ETC the exclusive right to choose, on behalf of the Members, whether to respond to bids, invitations, or requests for bids or other sales opportunities in the Export Markets;

8. ETC may enter into agreements with customers in the Export Markets whereby each customer agrees not to purchase Products from ETC's competitors;

9. ETC may enter into exclusive or nonexclusive agreements with any Export Intermediary whereby the Export Intermediary agrees not to represent any other competitor in the sale of Products in any Export Market and not to buy Products from competitors for resale in any Export Market;

10. For each Product bid, invitation or request for bid, or other sales opportunity in any Export Market, ETC or the ETC with one or more Members may negotiate and agree with one or more Members on the terms of the respective Member's participation in the bid or sale, including, but not limited to, the quantity of Products such Member will commit to the sale or bid opportunity and the price at which a Member will sell its Product for export. In order to negotiate these terms, the following information may be exchanged with each Member individually or with the Members collectively:

a. Information relating solely to the Export Trade in Export Markets (such as present and projected capacity, production, inventories, costs, prices, sales, orders; terms of marketing or sale, and strategies or methods of operation) of ETC or its Members;

b. Information (such as selling strategies, marketing efforts, activities and opportunities for sale, types of products available from competitors, prices, projected demand, and customary terms of sales) solely about the Export Markets, including reports and forecasts of sales, prices, terms, needs, and product specifications by customer or geographic area in the Export Markets;

c. Information on expenses specific to exporting to Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agent's commissions, export sales documentation and service, and export sales financing);

d. Information that is generally available to the trade or public;

e. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export;

f. Information about terms and conditions of contracts or sales in Export Markets to be considered and/or bid on by ETC and its Members;

g. Information about joint bidding, selling, or servicing arrangements for Export Markets, and allocation of sales resulting from such arrangements among the Members;

h. Information about ETC's or its Members' export operations, including, without limitation, sales and distribution networks established by ETC or its Members in Export Markets, and other export sales by Members (including export price information);

i. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market; and

j. Information on ETC's activities in the Export Markets, including customer complaints and quality problems, visits by customers located in the Export Markets, and reports by foreign sales representatives;

11. ETC may enter into agreements with Suppliers to supply and process logs or lumber into Products. These arrangements may provide for these Suppliers to "custom cut" or remanufacture logs or lumber owned by ETC or its Members;

12. ETC may enter into agreements with third parties to provide Export Trade Facilitation Services and/or act as an exclusive Export Intermediary;

13. ETC and/or its Members may discuss supply and demand for the Products in Export Trade, including, but not limited to, the quantities of Products desired by export customers, the supply of Products (based on domestic supply and demand) available for Export Trade, anticipated export prices, quality standards, packaging standards, and primary production schedules. ETC and its Members may not discuss specific price or quantities in specific domestic transactions involving the Products by any Member; provided, however, that each Member may, individually and on a confidential basis, furnish such domestic information to an independent entity not affiliated with any Member to compute averages and trends regarding domestic prices and quantities for disclosure to the Members in aggregated form. This independent entity shall not disclose to any Member the specific information furnished by any other Member.

14. ETC and/or its Members may discuss and/or agree upon the terms of export sales and upon the export price to be charged by ETC and/or its Members for the sale of Products or Export Trade Facilitation Services directed to an Export Market or to a

domestic or foreign exporter for ultimate sale in the Export Market;

15. ETC and/or its Members may limit membership in ETC;

16. ETC and/or its Members may allocate orders for export sales among its Members as agreed; and

17. ETC and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including price and/or cost), and, if such member elects to respond, it shall respond directly to the requesting party with respect to such information.

Abbreviated Amendment Procedure

New ETC members may be incorporated in the Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the ETC members that desire to be incorporated under the Certificate pursuant to the abbreviated amendment procedure and certifying for each such new member so identified its sales of Products in the prior fiscal year. Notice of new members so identified shall be published in the **Federal Register**. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the new members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure.

Definitions

1. *Supplier* means a person who produces, provides, or sells a Product or Export Trade Facilitation Service, whether a Member or nonmember.

2. *Export Intermediary* means a person who acts as a distributor, sales representative, sales and marketing agent or broker, or who performs the similar functions, including responding to bids, invitations, or requests for bids, or other sales opportunities in the Export Markets, and/or provides or

arranges for the provision of Export Trade Facilitation Services.

Dated: May 13, 1991.

George Muller,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 91-11690 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DR-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on June 13, 1991. The meeting will be from 2 p.m. to 4 p.m. in room 3407, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: Conditions in the export market, Office of Textiles and Apparel export expansion activities, Kuwait reconstruction activities, free trade agreement negotiations with Mexico and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-4324).

Dated: May 13, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-11739 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DR-F

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Tuesday, June 11, 1991, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and

Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST budget scheduled to begin at 3 p.m. and ending at 5 p.m. on June 11, 1991, will be closed.

DATES: The meeting will convene June 11, 1991, at 8:30 a.m. and will adjourn on June 11, 1991, at 5 p.m. A closed session is scheduled on June 11, 1991, beginning at 3 p.m. and adjourning at 5 p.m.

ADDRESSES: The meeting will be held in Conference Room 1103, Radio Building, National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 30, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: May 14, 1991.

John W. Lyons,

Director.

[FR Doc. 91-11778 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-13-M

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Thursday, June 13, 1991, through Friday, June 14, 1991. The Panel of Judges is composed of nine members prominent in the field of

quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to review the 1991 Award applications and to select applications to be recommended as Award winners. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 13, 1991, at 8:30 a.m. and adjourn at 3 p.m. on June 14, 1991. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 11, 1990, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 14, 1991.

John Lyons,

Director.

[FR Doc. 91-11779 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[Docket No. 910497-1097]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Northeast Multispecies Fishery.

SUMMARY: NOAA issues this notice to announce that anyone entering the Northeast multispecies fishery after February 21, 1991 (control date), will not be assured of future access to the

multispecies resource in Federal waters if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Northeast multispecies resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. Although this announcement is purely advisory and does not prevent entry into the fishery, the intended effect is to discourage new entry to the fishery, while discussions continue on whether and how access to the multispecies resource should be controlled.

FOR FURTHER INFORMATION CONTACT:

Douglas G. Marshall (Executive Director, New England Fishery Management Council), 617-231-0422 or Jack Terrill (Resource Policy Analyst, Northeast Region, NMFS), 508-281-9252.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) prepared the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), which was conditionally approved by the Director, Northeast Region (Regional Director), NMFS, on July 17, 1986. Regulations implementing the FMP became effective on September 19, 1986 (51 FR 29642, August 20, 1986). Amendment 1 to the FMP, which became effective on October 1, 1987 (52 FR 35093, September 17, 1987), responded to deficiencies that were identified by the Regional Director in his conditional approval of the plan. Amendment 2, which became effective on February 27, 1989 (54 FR 4798, January 31, 1989), improved the effectiveness of several of the existing FMP measures in relation to two major factors: (1) The promotion of regulatory compliance, and (2) the long-term achievement of management objectives.

Amendment 3 implemented the Flexible Area Action System (FAAS), effective on December 19, 1989 (54 FR 52803, December 22, 1989). This amendment enabled the management system, including the Council, its Multispecies Committee, NMFS, and other management agencies to respond in a more timely manner to protect large concentrations of juvenile, sub-legal (smaller than the minimum legal size), and spawning fish.

A control date for the multispecies fishery had been considered by the Multispecies Committee of the Council (Committee) in November 1990. At its December 17, 1990, meeting, the Committee approved a motion to be

presented to the Council for formal adoption that would establish a control date of December 17, 1990. At the next meeting of the Committee, it was determined that further discussion and refinement of the motion was needed before the control date and accompanying language should be considered by the Council.

The Council, at its February meeting, voted to establish a control date of February 21, 1991, in the Northeast multispecies fishery. The adoption of a later date was to match more closely the actual date of the vote to provide greater fairness to potential participants in the fishery. In taking this action, the Council is giving notice that there is the potential, at a future date, of capping the number of existing permits in order to allow the rebuilding goals to be more easily achieved. Additional vessels entering the fishery during this rebuilding process would allow for an increase in fishing effort, which could prevent rebuilding.

The Council's intent in publishing this notice is to discourage entry into the fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. Although harvesters who did not hold a permit prior to the control date are not legally prevented from entering the fishery, they are hereby notified that entering the fishery after the control date will not assure them of future access to the fishery on the grounds of previous participation; other qualifying criteria also may be applied for entry.

To provide further guidance on how the control date and a possible management regime could be implemented, the Council also adopted language that may be incorporated into an upcoming amendment to the FMP. This included:

(A) To be issued a Federal Fisheries Permit for the Northeast multispecies fishery (permit) for 1992, a vessel must meet one of the following criteria:

(1) Hold a valid permit as of February 21, 1991, and show proof of landings of said fish during the time period from January 1, 1990, through February 21, 1991.

(2) For a charter and party boat, as defined in the FMP, hold a permit as of February 21, 1991, and show proof that it carried recreational fishing parties for a fee during the time period from January 1, 1990, through February 21, 1991.

(3) Show written proof that a vessel was under construction, reconstruction, or was under written contract for purchase as of February 21, 1991, and landed the identified fish by February

21, 1992, or if a charter or party boat, show proof that it carried recreational fishing parties as of February 21, 1992.

(B) To be issued a permit for 1993 and beyond, eligibility requirements described above will be based on the preceding calendar year.

(C) Any permit held by a vessel that is lost or destroyed will become invalid. However, the owner may (within one year) apply for a replacement permit for a vessel, not to exceed a 10 percent increase in horsepower or fish hold capacity, as listed on the permit application. In the case of charter or party boats, the replacement vessel may not exceed a 10 percent increase in passenger carrying capacity, as described on the United States Coast Guard (USCG) certificate.

(D) Transfer:

(1) A permit issued under this proposal is not transferable or assignable except to a new owner. Any transfer or assignment to a new owner must be in writing and must be sent to NMFS in order that a permit may be issued in the name of the new owner.

(2) The owner of a permitted vessel may replace that vessel with another vessel not to exceed a 10 percent increase in horsepower or fish hold capacity as listed on the vessel permit application. In the case of charter or party boats, the replacement vessel may not exceed a 10 percent increase in passenger carrying capacity as described on the USCG certificate.

(E) Appeal of Permit Denial:

(1) Any applicant denied a permit may appeal such denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

(a) The denial was based on mistaken or incorrect information or data;

(b) The applicant was prevented by circumstances beyond his or her control from meeting relevant criteria; or

(c) The applicant has new or additional information that might change the initial decision.

(2) The applicant will have the right to an oral hearing.

(F) A vessel may change gear types within the multispecies fishery. The Council should encourage vessels to shift effort to more selective types of fishing gear.

(G) At the end of the rebuilding period, if the Council deems the fisheries can sustain additional effort, then permits may be issued based on some type of historical participation, possibly including work experience aboard a vessel during the rebuilding process.

(H) Any vessel with a valid permit would not be allowed to increase horsepower or fish hold capacity. In the

case of party/charter boats, an increase in passenger carrying capacity would not be allowed.

This notice hereby announces that February 21, 1991, may potentially be used to determine historical or traditional participation in the Northeast multispecies fishery. This action does not commit the Council to develop any particular management regime or any specific criteria for determining entry to the Northeast multispecies fishery. Harvesters are not guaranteed future participation in the Northeast multispecies fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date.

The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to harvesters in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson Fishery Conservation and Management Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 13, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 91-11775 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 17, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Bracket, Duct, 2840-00-798-0897.
Bracket, Angle, 5340-01-180-5984.
Retainer, 5340-00-409-8491.

Services

Janitorial/Custodial, Naval Air Station, ARCOM Buildings 176 & 177, Willow Grove, Pennsylvania.

Janitorial/Grounds Maintenance, West Hill Dam, Uxbridge, Massachusetts.

Deletions

It is proposed to delete the following commodities and service from the Procurement List:

Commodities

Bag, Urine Collection, 6530-00-057-0953.
Urinary Drainage Bag, 6530-01-056-3659.
Robe, Dressing, Man's, 6532-01-215-7963, 6532-01-215-7964.
Robe, Dressing, Woman's, 6532-01-215-7965, 6532-01-215-7966.
Skirt, Woman's, 8410-01-187-1415 thru 8410-01-187-1441.

Service

Janitorial/Custodial, Army and Air Force Exchange, 5315 Summit Parkway, San Antonio, Texas.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-11788 Filed 5-16-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 17, 1991.

ADDRESSES: Committees for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 15, March 22 and 29, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 6374, 12193 and 13129) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51.2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodity and services listed.
- The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Case, Ear Plug, 6515-01-212-9452 (Remaining 20% of Government's Requirement).

Services

Janitorial/Custodial, Armed Force Reserve Center, Bellefonte, Pennsylvania.

Janitorial/Custodial, Building 1287, Hill Air Force Base, Utah.

This action does not affect contracts awarded prior to the effective date of

this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-11787 Filed 5-16-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 17, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 22, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 7346) of proposed additions to the Procurement List. Comments were received from one of two current contractors for this paper towel, both directly and through a member of Congress. The commenter provided data indicating that addition of this paper towel to the Procurement List would have a sizeable impact on the company, which would cause loss of jobs for some of its largely minority and female workforce. The commenter also stated that Committee decisions to place only a part of the Government's requirements for an item on the Procurement List at a time would eventually result in all the requirements for the item being removed from competitive bidding.

The proposed addition to the Procurement List has been revised to delete that part of the Government's requirements for which the commenter is the current contractor. If the Committee considers adding the remaining part of the Government's requirements for the paper towel to the Procurement List in the future, it will take into account the impact of earlier additions on the firm which is the current contractor at the time in deciding whether the proposed addition would have a serious adverse impact on that contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce

the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any addition reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List: Towel, Paper, 7920-00-965-1709, (GSA Regions W,1,2,5,6,7,8,9 & 10).

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-11786 Filed 5-16-91; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on June 3, 1991, in Washington, DC. The purpose of the meeting is to discuss recent research on cigarette ignition propensity and plans for a cigarette fire incident study.

DATES: The meeting will be from 10 a.m. to 5 p.m. on June 3, 1991.

ADDRESSES: The meeting will be in Courtroom B, International Trade Commission, 500 E Street SW., Washington, DC.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 492-5709.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Office of Hazard Identification and Reduction, Consumer Product Safety Commission,

Washington, DC 20207; telephone: (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute for Standards and Technology (NIST) and the Department of Health and Human Services to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on June 3, 1991, to discuss recent research on cigarette ignition propensity and plans for a cigarette fire incident study.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: May 13, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-11763 Filed 5-16-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Approval of the Proposed Permanent Gaviota Marine Terminal, Santa Barbara County, California, for a Department of the Army Permit

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement.

SUMMARY: The proposed action is to issue a permit pursuant to section 10 of the River and Harbor Act of 1899 to establish Gaviota Terminal Company (GTC) as the consolidated terminal and to increase crude oil throughput limits

from 100,000 barrels of oil per day (BOD) to 125,000 (BOD), and to increase the number of marine tankers calling at the facility from 136 to 196 per year. These actions are proposed by GTC to make its existing interim marine terminal at Gaviota, the permanent and County's consolidated marine terminal in Santa Barbara County, California.

Because the proposed mooring configuration for the permanent Gaviota Marine Terminal was not addressed in previous environmental review, the Corps of Engineers has determined that an Environmental Impact Statement shall be required pursuant to the National Environmental Policy Act. A Joint Review Panel (JRP) consisting of the primary permitting agencies for this project has been formed to coordinate multi-agency review of the project. The JRP includes representatives of the U.S. Army Corps of Engineers, California State Lands Commission, California Coastal Commission, California Office of Environmental Protection, and Santa Barbara County. Santa Barbara County will serve as lead agency under the California Environmental Quality Act (CEQA). The environmental document will be a joint Environmental Impact Statement/Supplemental Environmental Impact Report (EIS/SEIR). The purpose of the EIS/SEIR is to assess the potential environmental impacts associated with long-term use of the interim marine terminal, including increased crude oil throughput limits and increased tanker visits at Gaviota.

Questions about the proposed action and DEIS can be answered by: Ms. Diane Noda, (213) 894-5606, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 2711, Los Angeles, California 90053-2325.

SUPPLEMENTARY INFORMATION: 1.

Proposed Action. Facility status would change from interim to permanent. Crude oil throughput limits would be increased from 100,000 barrels to 125,000 barrels per day maximum. The maximum number of tanker trips would increase from 136 trips per year to 196 trips per year with the same tanker fleet. Caviota Terminal Company is proposing no physical changes to the existing facility. In order for GTC's facility to function as a consolidated marine terminal, however, an onshore feeder pipeline must be constructed between the marine terminal storage tanks and the All-American Pipeline to allow crude oil to flow from Las Flores Canyon into the marine terminal. The feeder line would be constructed in a pipeline corridor which extends from the northeast corner of GTC's facility to All American's coastal segment extending

from Las Flores Canyon to Gaviota. The timing of the feeder line construction is uncertain.

2. Alternatives. The following alternatives will be considered: (1) No-action alternative, abandonment of existing marine terminal at Gaviota Interim Marine Terminal (GIMT); (2) use of Interim Marine Terminal at Gaviota until Single Anchor Leg Mooring (SALM) construction at Las Flores Canyon (LFC); (3) Gaviota existing six-point mooring moved further offshore; (4) construction of a SALM at Gaviota; (5) construction of a SALM at Gaviota and Las Flores Canyon, two marine terminals; (6) alternative marine terminal locations; and (7) no marine terminals, pipeline transport only.

3. Scoping Process. Federal, state, and local agencies and other interested private organizations are encouraged to send their written comments to Ms. Diane Noda at the address provided above. Significant issues to be analyzed in depth in the DEIS include:

a. **Air Quality.** Increased durations of hydrocarbon, NO_x, SO_x, CO₂, reactive organic compounds and fine particulates.

b. **Marine Water Quality.** Changes in water column heavy metals or toxic substances as a result of bilge discharges, ballast, or deck drainage.

c. **Marine Biology.** The Draft EIS will assess loss of or disturbance to rare or endangered species due to increased tanker traffic and potential oil spills; changes to kelp canopy due to increased vessel traffic.

d. **Fisheries.** Preclusion of commercial/sport fishing areas and anchorages; increased cost/decreased revenue to commercial fisheries; and potential for hazards to commercial/sport fisheries.

e. **System Safety and Reliability.** The DEIS will assess marine vessel accidents, reliability of existing and alternative mooring facilities; adequacy of marine emergency response; adequacy of existing terminal operating procedures and spill prevention measures; increased risk of minor and major onshore and offshore oil spills due to increased throughput and long-term operations; and adequacy of existing navigational control and monitoring systems.

f. **Land Use.** Incompatibility with Federal, state, and local plans; incompatibility with surrounding or nearby land uses; preclusion of other future uses due to long term operation.

g. **Transportation.** Offshore boat traffic congestion.

h. **Cultural Resources.** Feeder pipeline construction impacts.

i. **Terrestrial Biology.** Feeder pipeline construction impacts.

j. **Public Recreation and Access.** Temporary interference during tanker calls with, and hazards to, recreational boaters and fishing; delay in completion of bike path across terminal property; long-term preclusion of public recreation uses and access.

k. **Aesthetics.** Change in visual resources and scenic quality due to increased tanker traffic and long-term operation of onshore facilities.

l. **Noise.** Increased duration of noise associated with tanker operations.

m. **Socioeconomic.** Impacts on public services in the Tri-county area (San Luis Obispo, Santa Barbara, and Ventura counties).

Formal coordination will be undertaken with the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Game, State Historic Preservation Office, California Regional Water Quality Control Board, California Coastal Commission, and the County of Santa Barbara.

4. Scoping Meeting. A scoping meeting will be held on Thursday evening, May 30, 1991 to assess preliminary issues relative to modification of Gaviota Marine Terminal from Interim to Permanent status. The scoping meeting will be held in Santa Barbara, California. Participation in the scoping meeting by Federal, State, and local agencies, and other interested private organizations and parties is encouraged.

5. DEIS Schedule. The current schedule estimates that the DEIS will be available for public review and comment in February 1992.

Dated: May 10, 1991.

Charles S. Thomas,

Corps of Engineers, District Engineer.

[FR Doc. 91-11700 Filed 5-16-91; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award Grant to Letco International

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Letco International, under Grant Number DE-FG01-91CE15512.

The proposed grant will provide funding in the amount of \$92,841 for Letco International to design, develop and test an improved, more reliable and more marketable version of their Automatic Metering System (AMS). The AMS is a new, energy-efficient approach to providing freeze protection to externally housed piping while using the least amount of energy. The proposed project will support DOE's mission which is to further develop the patented AMS to make it more acceptable in the marketplace. The AMS will make the product more reliable by developing some "fail-safe" features to prevent freezing, add monitoring features to let the user know if the AMS is operating properly, and develop technical materials to permit potential users to quickly determine energy savings potential.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Letco International, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The Energy-Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed technology has a strong possibility of allowing for future reductions in the nation's energy consumption.

The anticipated term of the proposed grant is eighteen months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Phyllis P. Morgan, PR-322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-11790 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information submitted to OMB for review was:

1. Office of Policy, Planning, and Analysis.
2. PE-872.
3. N.A.
4. Flue Gas Desulfurization Survey.
5. New.
6. Quarterly.
7. Voluntary.
8. State or local governments, Businesses or other for profit, and Federal agencies or employees.
9. 226 respondents.
10. 4 responses.
11. 3.25 hours per response.
12. 2,938 hours.
13. PE-872 will be used to collect data on the materials, design, and performance for utility flue gas desulfurization installations. The data will supplement and support other DOE data bases on FGD systems. Data will be issued annually. Respondents are operator utilities, technology suppliers, or designers involved in either the operation or planning of an FGD system.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 14, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-11792 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TQ91-5-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 10, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 8, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective June 1, 1991
 Sub Third Revised Sheet No. 21
 Sub Third Revised Sheet No. 22
 Sub Third Revised Sheet No. 26
 Sub Third Revised Sheet No. 27
 Sub Third Revised Sheet No. 28
 Sub Third Revised Sheet No. 29

Algonquin states that on May 1, 1991 in Docket No. TQ91-4-20-000, Algonquin filed tariff sheets comprising its quarterly purchased gas adjustment (PGA) to become effective June 1, 1991. Subsequently, on May 3, 1991 the

Commission rejected filing under § 385.2001(b) of the regulations, without prejudice to Algonquin's resubmitting the filing with a corrected electronic medium. Algonquin states that it is refiling its Quarterly PGA to comply fully with the Commission's electronic medium standards and is not making any changes in the rates submitted under Docket No. TQ91-4-20-000. Furthermore, Algonquin requests that the filing fee associated with Docket No. TQ91-4-20-000 be applied to the instant filing.

Algonquin states that the proposed effective date for the revised tariff sheets listed above is June 1, 1991.

Algonquin states that the rate effect embodied in Docket No. TQ91-4-20-000 and carried forth in the instant filing is to increase the demand charges by \$.0860 per MMBtu and to increase the commodity charges by 20.40¢ per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's Revision to the Surcharge Adjustment of April 18, 1991 in Docket No. TA91-1-20-001.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before May 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11720 Filed 5-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-111-000, RP88-190-002, TM89-2-27-003, TA88-1-27-004, RP88-57-002, and RP88-110-002]

North Penn Gas Co.; Amended Notice of Conference to Discuss Settlement

May 10, 1991.

Pursuant to the Commission's order

issued on March 29, 1991, an informal settlement conference is to be held in North Penn Gas Company, Docket No. RP91-111-000. In addition to the issues raised in this docket the conference will also address the issues raised in North Penn Gas Company, Docket Nos. RP88-190-002, TM89-2-27-003, TA88-1-27-004, RP88-57-002, and RP88-110-002. The proceedings in Tennessee Gas Pipeline Company, Docket Nos. RP85-178-000 and RP88-191-000; Transcontinental Gas Pipe Line Corporation, Docket Nos. RP88-68-000, RP88-68-001, and RP87-7-012; and CNG Transmission Corporation, Docket No. RP88-217-000, referred to in the previous notice will not be discussed at the conference. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Tuesday, May 14, 1991 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11721 Filed 5-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-152-0000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 10, 1991.

Take notice that on May 8, 1991, Williams Natural Gas Company (WNG) tendered for filing certain revised tariff sheets to Original Volumes Nos. 1 and 2 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is June 7, 1991.

WNG states that the filing proposes a change in its currently effective sales, transportation and other rates which would result in an increase in annual revenues of approximately \$71.2 million, based on the test period (the twelve months ended February 28, 1991, adjusted for known changes through November 30, 1991). WNG states that the increased rates are required to reflect increases in expenses, a decline in sales throughput due to reductions and conversions and a decline in total throughput. WNG proposes (1) a decrease in the depreciation rate to be applied to gathering facilities; (2) seasonalization of ITS rates; and (3) a

tariff revision providing minor adjustments in the delineation of certain gathering areas.

WNG states that a copy of the filing were served on each of WNG's customers and affected state commissions pursuant to §154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11722 Filed 5-16-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of April 5 Through April 12, 1991

During the Week of April 5 through April 12, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May, 13, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
Apr. 8, 1991.....	Daniel P. Smith, Ames, Iowa.....	LFA-0110	Appeal of an information request denial. If Granted: The March 8, 1991 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Daniel P. Smith would receive access to the entire technical proposal submitted by Engineering Resources, Inc. for a process for the biological conversion of waste gases to acetic acid.
Do.....	Glenn T. Edwards, Albuquerque, New Mexico.....	LFA-01112	Appeal of an information request denial. If Granted: The March 28, 1991 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Glenn T. Edwards would receive access to DOE information.
Do.....	IGR Enterprises, Inc., Cleveland, Ohio.....	LFA-0109	Appeal of an information request denial. If Granted: The March 1, 1991 Freedom of Information Request Denial issued by the Pittsburgh Energy Technology Center would be rescinded, and IGR Enterprises, Inc. would receive access to copies withheld of the technical proposal submitted by Helipump Corporation in response to PRDA DE-RA22-90PC8902.
Do.....	The Oak Ridger, Oak Ridge, Tennessee.....	LFA-0111	Appeal of an information request denial. If Granted: The February 19, 1991 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and The Oak Ridger would receive access to DOE information.

Date received	Name of refund proceeding/name of refund application	Case No.
4/8/91.....	Wallace & Wallace Fuel Oil.	RF321-14733.
4/5/91.....	Ron & Al's Texaco.	RF321-14734.
4/8/91.....	Swann Oil Co., Inc.	RF304-12204.
4/9/91.....	Western Motors Service, Inc.	RF315-10136.
4/9/91.....	Cesare's Shell.....	RF315-10137.
4/10/91.....	Paul's ARCO.....	RF304-12205.
4/10/91.....	N.N. Mackrill.....	RF304-12206.
4/4/91.....	City of Bryan et al.	RF326-00252.
4/8/91.....	Sooner Petroleum Company.	RF326-00253.
4/8/91.....	BP North America Petroleum.	RF326-00254.
4/8/91.....	Ashland Oil, Inc.....	RF326-00255.
4/9/91.....	City of Bryan et al.	RF326-00256.
4/11/91.....	Baroid Corporation.	RF326-257.
4/11/91.....	Mel's Car Case Center.	RF307-10182.
4/5/91 thru 4/12/91.	Crude Oil Refund Applications Received.	RF272-89228 thru RF272-89259.
4/5/91 thru 4/12/91.	Gulf Oil Refund Applications Received.	RF300-16329 thru RF300-16369.
4/5/91 thru 4/12/91.	Texaco Refund Applications Received.	RF321-14733 thru RF321-14781.

[FR Doc. 91-11794 Filed 5-16-91; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 8 Through April 12, 1991

During the week of April 8 through April 12, 1991, the decisions and orders summarized below were issued with respect to applications for exception or

other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

T.E. Reserve Corporation, James G. Allison, Jr. 4/8/91 KRO-0400

T.E. Reserve Corporation (TERC) and James G. Allison, Jr., objected to a Proposed Remedial Order that was issued to them on February 28, 1986. In the PRO, the Economic Regulatory Administration alleged that the firm violated the layering rule, 10 CFR 212.186, by reselling crude oil at a markup without performing any historical and traditional crude oil reselling service. The PRO also found that Allison, TERC's sole owner, should be held jointly and severally liable for TERC's violations.

In considering the objections, the DOE found that TERC's crude oil resales, except those in which the firm transported or stored crude oil, violated the layering rule. The DOE rejected the argument that it did not have jurisdiction over TERC's transactions because they were alleged to be crude oil futures contracts rather than crude oil resales. The DOE also found no merit to the argument that transactions in which the firm alleged to have purchased crude oil from producers or sold it to refiners were not layered, because there was no evidence that the alleged producers and refiners produced or refined the crude oil in question. The ERA based the refund liability upon the firm's gross profits. For each month, the amount of the firm's gross profits were adjusted to allow the firm a markup on transactions in which it transported or stored crude oil and to compensate for the difference in that month's purchase

and sales volumes. In computing the overcharge amount, the ERA did not offset the respondents' refund liability in months in which TERC had a profit by the amount of the firm's losses in other months. The DOE found that the method used by the ERA to calculate the refund obligation was generally reasonable. It rejected the firm's argument that the layering rule required the ERA to match each purchase with its corresponding sales transactions. The DOE found, however, that under the circumstances of the present case where there were large numbers of inter-month transactions, the overcharge computation should permit TERC to offset its refund obligation in months in which it had a gross profit by the amount of its undercharges in months in which it had a gross loss. The DOE also found that the PRO improperly included the portion of TERC's January 1981 transactions that occurred after decontrol and were therefore not subject to DOE jurisdiction.

Finally, the DOE found that Allison should be held personally liable for TERC's refund liability, because he was the person primarily responsible for the violations and because he reaped substantial benefits from the overcharges. The DOE found no merit to Allison's contentions that Congress did not delegate to DOE the authority to adjudicate claims of personal liability and that the Constitution required such claims be decided by an Article III court. Accordingly, the DOE issued the PRO, as modified, as a final Remedial Order.

Request for Exception

Teesdale Oil Co., 4/10/91, LEE-0021

Teesdale Oil Co. filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum

Product Sales Report." The DOE determined that Teesdale Oil did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the EIA reporting requirements. Accordingly, exception relief was denied.

Berle S. Bonner, 4/10/91, RF272-51263

The DOE issued a Decision and Order granting the subpart V crude oil refund application of Berle S. Bonner, filed on behalf of 4475 Hudson Corp. The firm was found to have been an end-user of the petroleum products it purchased during the period August 19, 1973 through January 27, 1981. Berle S. Bonner was therefore granted a \$10,740 refund under the end-user presumption of injury. Since 4475 Hudson Corp. is now defunct, the refund check was sent to the firm's attorney, Elliot Gross, who was ordered to disburse the refund to the firm's stockholders according to their respective ownership interests in the corporation at the time of its dissolution.

Refund Applications

Benjamin Moore & Co., 4/12/91, RF272-23366, RD272-23366

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant, Benjamin Moore & Co. (Benjamin Moore), is a company involved in the manufacturing and selling of paint and related coatings. A group of state governments and two territories of the United States (the States) objected to the application filed by Benjamin Moore, provided evidence concerning the paint industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Benjamin Moore had been able to pass on the crude oil overcharges to its customers. The DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Benjamin Moore were injured by crude oil overcharges. Benjamin Moore was unable to pass through its alleged overcharges. Benjamin Moore purchased 28,860,023 gallons of xylene, naphtha, mineral spirits and ethyl during the period of crude oil price controls. Xylene, mineral spirits, and naphtha are products refined from crude oil and are covered products and are thus eligible for a crude oil refund. Ethyl benzene, however, is the result of the further chemical manipulation of an explicitly covered product, benzene. The firm that substantially changed the benzene to

create ethyl benzene is afforded an end-user presumption of injury with respect to its purchases of benzene. The DOE determined that Benjamin Moore was ineligible for a refund based on its purchases of this changed derivative of a covered product. The applicant was therefore granted a refund of \$22,666 based on 28,332,508 gallons of refined petroleum products. The DOE denied the Motion for Discovery filed by the States.

Cook Paint and Varnish Company, 4/9/91, RF272-23366, RD272-23366

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant, Cook Paint and Varnish Company (Cook), is a company involved in the manufacturing and selling of paint and related coatings. A group of state governments and two territories of the United States (the States) objected to the application filed by Cook, provided evidence concerning the paint industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Cook had been able to pass on the crude oil overcharges to its customers. The DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Cook were injured by crude oil overcharges. Cook was unable to pass through its alleged overcharges. Cook purchased 52,344,573 gallons of gasoline, fuel oil, benzene, toluene, grease, xylene, various hydrocarbon solvents, naphtha, mineral spirits, ethyl benzene, heptene, and hexane during the period of crude oil price controls. Diesel fuel, gasoline, toluene, fuel oil, benzene, grease, xylene, naphtha and hexane are refined petroleum products that were regulated during the settlement period and have been accepted by the OHA as eligible for crude oil refunds. Similarly, mineral spirits, hydrocarbon solvents, and aliphatic hydrocarbon solvents are refined from crude oil and are covered products and are thus eligible for a crude oil refund. Heptene, a product similar to heptane, is also a refined petroleum product that was regulated during the settlement period and thus accepted by the OHA as eligible for a crude oil refund. Ethyl benzene, however, is the result of the further chemical manipulation of an explicitly covered product, benzene. The firm that substantially changed the benzene to create ethyl benzene is afforded an end-user presumption of injury with respect to its purchases of benzene. The DOE determined that Cook was ineligible for a refund based on its purchases of this

changed derivative of a covered product. The applicant was therefore granted a refund of \$41,875 based on 52,343,688 gallons of refined petroleum products. The DOE denied the Motion for Discovery filed by the States.

Frisco Manufacturing Co., Inc., 4/9/91, RF272-48572

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant was a manufacturer of finished furniture and purchased 962,467 gallons of diesel fuel, gasoline, toluene, propane, heating oil, lacquer varnish, furniture stain, furniture paint, retarder, sealer, reducer and thinner. Diesel fuel, gasoline, toluene, propane and heating oil are refined petroleum products that were regulated during the settlement period and have been accepted by the OHA as eligible for crude oil refunds. In investigating the remaining products, we have determined that reducer, which is made of 100% xylene, is similarly a product that is derived from crude oil and eligible for a refund. The thinner, however, is a blend consisting of toluene and other components so that the toluene of the thinner is substantially changed. It would therefore be the firm that substantially changed the toluene to create the thinner that should be afforded an end-user presumption of injury with respect to its purchases of toluene. The DOE determined that Frisco was ineligible for a refund based on its purchases of this changed derivative of a covered product. It was also determined that varnish, furniture stain, furniture paint and sealer are not eligible for crude oil refunds. The applicant was therefore granted a refund of \$433 based on 541,867 gallons of refined petroleum products.

Johnson Controls, Inc., 4/8/91, RF272-75215

The DOE issued a Decision and Order denying an Application for Refund filed by Johnson Controls, Inc. (Johnson), in the subpart V crude oil special refund proceeding. The denial was based on the fact that Johnson had applied for and had been granted a refund from the Surface Transporters Escrow and had thereby waived its right to a refund in the crude oil proceeding.

Pacific N.W. Bell, Northwestern Bell Telephone Co., 4/11/91, RF272-61859, RF272-62527

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to Pacific N.W. Bell (PNW) and Northwestern Bell Telephone Co. (NWB)

based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Both companies are involved in the communications industry and are owned by US West, Inc. Both companies purchased lubricating oils, but neither had the price information necessary to convert the total dollar amount it spent on lubricating oils into a gallonage claim. Using available information from the Energy Information Administration, the DOE made this conversion from dollars to gallons. The DOE granted PNW a refund of \$27,133 and NWB a refund of \$45,651.

*Portland Public Schools, 4/11/91,
RF272-70574*

The DOE issued a Decision and Order granting an Application for Refund filed by Portland Public Schools, in the subpart V crude oil refund proceeding. The applicant is a public school district that purchased No. 2 diesel fuel and No. 1 fuel oil to roof, pave, fuel its school buses and maintenance vehicles, and heat its schools. By using the pricing information available from two sources, the *EIA Annual Energy Review* and *Platt's Oil Price Handbook and Oil-manac*, the DOE estimated the price, including taxes, of No. 1 fuel oil. These prices were used to convert the dollars expended for No. 1 fuel oil into gallons purchased. The overall refund granted to the applicant was \$45,425.

*Shell Oil Company/Consolidated
Edison Company of New York, Inc.,
4/10/91, RF315-9941*

The DOE issued a Decision and Order granting an Application for Refund filed by Shell Oil Company special refund proceeding by Consolidated Edison Company of New York, Inc. (Con Edison). Con Edison is a public utility which was a purchaser of refined petroleum products from Asiatic Petroleum Corporation (Asiatic). Asiatic was wholly owned by Shell Petroleum N.V., a Royal Dutch/Shell Group Holding Company (Royal Dutch). Shell Oil Company is also owned by Royal Dutch. While the Shell Consent Order does not expressly indicate whether Asiatic's sales are meant to be covered by the settlement, our examination of the definitions of the terms "the company" used in the Shell Consent Order, and "affiliate" as it has been generally used by the DOE led us to

conclude that (i) Asiatic is an affiliate of Shell, and (ii) sales of covered products by Asiatic should be considered as having been made by Shell for the purposes of this refund proceeding. Con Edison, as an Asiatic purchaser, is eligible for a refund from the Shell Consent Order funds. The DOE granted Con Edison a refund of \$143,016 (\$106,103 principal plus \$36,913 interest) based on its approved purchases of 469,483,093 gallons.

State of Montana 4/10/91, RF272-53604

The DOE issued a Decision and Order concerning an Application for Refund that the State of Montana (Montana) filed in the crude oil subpart V refund proceeding. One aspect of the Montana claim involved liquid asphalt that the State had purchased under contracts which contained price escalator clauses. Through these contractual clauses, Montana had reimbursed the manufacturers of paving asphalt for the all cost increases, including the liquid asphalt portion of the paving asphalt. On this basis, the DOE found that Montana presented a reasoned argument that it was injured by the crude oil overcharges, and was therefore the proper recipient of the refund for the liquid asphalt portion on the paving asphalt it had purchased under the escalator clause contracts. The DOE determined that the refund claim was meritorious and granted a refund of \$211,827. Philip P. Kalodner (Kalodner), counsel for Utilities, Transporters, and Manufacturers, filed Comments and Conditional Objections to Montana's Application for Refund. The DOE determined that Kalodner's arguments were insufficient to rebut the presumption of end-user injury. Montana will be eligible for additional refunds as additional crude oil overcharge funds become available.

*Texaco Inc./Cochran's Texaco, 4/10/91,
RF321-2649*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by Richard E. Cochran, the owner of Cochran's Texaco. Mr. Cochran disagreed with the motor gasoline gallonage figures recorded on his Texaco printouts and submitted his own estimates for his direct purchases from Texaco. Mr. Cochran was unable to convince the DOE that his estimates

based on memory were more accurate than the figures that were shown in Texaco's records. Consequently, the DOE approved his claim using the figures listed on his Texaco volume schedules.

*Texaco Inc./Ossining Service Station,
Lou DiLoreto, Inc., 4/8/91, RF321-
5702, RF321-6779*

The DOE issued a Decision and Order concerning two applications for Refund filed in the Texaco Inc. special refund proceeding. Both Applications were based on the purchases of Texaco products by Lou DiLoreto, Inc. for Ossining Service Station. One application, filed by Louis DiLoreto, the owner of the corporation during the consent order period, was denied because the right to a refund was transferred upon the sale of the stock of the corporation. The other application, filed by Edward Retta, the current owner of the corporation, was approved. The refund granted was \$832 (\$677 principal plus \$155 interest).

*Texaco Inc./Petro-Wash, Inc., 4/11/91,
RF321-5460*

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Petro-Wash Inc. Petro-Wash stated that it was a Texaco jobber during the refund period. The applicant did not submit printouts of its Texaco purchase volumes of the type normally provided by Texaco to jobbers that purchased directly from Texaco, but instead submitted Texaco printouts for each retail outlet that it supplied during the refund period. These printouts were of the type that Texaco normally provides to retail outlets that were direct purchasers of Texaco products. Copies of Petro-Wash contracts with Texaco and with its retail franchises, however, confirm that Petro-Wash purchased motor gasoline from Texaco and resold it to its retail franchises. Consequently, the DOE found that Petro-Wash was a reseller of products that it purchased directly from Texaco and was entitled to receive a refund in the Texaco proceeding. The applicant, which purchased 101,532,610 gallons of Texaco products, stated that it accepted the medium-range presumption of injury. Accordingly, Petro-Wash was granted the maximum presumption refund of \$61,745 (\$50,000 principal plus \$11,745).

Refund applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Hoist & Derrick Company	RF272-259	04/08/91
American Hoist & Derrick Company	RD272-259	

Archdiocese of New York	RF272-67711	04/10/91
Arcone Oil Company	RF272-75419	04/12/91
Atlantic Coast Paperboard	RF272-27791	04/09/91
Atlantic Coast Paperboard	RD272-27791	
Gulf States Paper Corporation	RF272-50692	
Gulf States Paper Corporation	RD272-50692	
Atlantic Richfield Co./A.M. Guldin, Inc. <i>et al.</i>	RF304-3439	04/10/91
Atlantic Richfield Co./Downing Oil Co.	RF304-11587	04/11/91
Niskayuna Coal & Oil Co.	RF304-11620	
Snyder Oil Company	RF304-11663	
Atlantic Richfield Co./J & J Auto Service <i>et al.</i>	RF304-10913	04/10/91
Atlantic Richfield Co./Smith's Grocery & Service	RF304-12199	04/09/91
Atlantic Richfield Co./Swann Oil, Inc.	RF304-12204	04/09/91
Bob's Gulf Service <i>et al.</i>	RF272-84105	04/12/91
Buffalo Municipal Housing Authority <i>et al.</i>	RF272-64005	04/10/91
Carnation Company	RF272-27518	04/08/91
Carnation Company	RD272-27518	
Chicago Transit Authority	RF272-29789	04/10/91
Dover Equipment & Machine Co. <i>et al.</i>	RF272-17724	04/09/91
Dover Equipment & Machine Co.	RD272-17724	
E.L.M.A.	RF272-25979	04/11/91
E.L.M.A.	DF272-25979	
Exxon Corporation/Clarence J. Rulon	RF307-10181	04/12/91
Farmers Union Oil Co. <i>et al.</i>	RF272-65275	04/10/91
Farmers Union Oil Company	RF272-75630	04/12/91
Farmers Exchange #58173	RF272-75631	
Farmers Union Oil Co. of Climax	RF272-75632	
General Tire, Inc.	RF272-32278	04/11/91
General Tire, Inc.	RD272-32278	
Gulf Oil Corp./Francis L. Ferris <i>et al.</i>	RF300-11908	04/12/91
Gulf Oil Corp./Rhea Oil Co., Inc. <i>et al.</i>	RF300-5894	04/08/91
Gulf Oil Corp./Tri-State Petroleum Corp.	RF300-8412	04/11/91
J.W. Jones Construction Co.	RF272-16349	04/08/91
Brown & Lambrecht Earthmovers, Inc.	RF272-16654	
A. Teichert & Son, Inc.	RF272-16736	
A. Teichert & Son, Inc.	RD272-16736	
N-C Paving	RF272-16819	
N-C Paving	RD272-16819	
Jefferson County Public Schools <i>et al.</i>	RF272-52549	04/08/91
Jersey Central Power & Light Company	RF272-21239	04/10/91
Murphy Oil Corp./Easters Spur Go Shop <i>et al.</i>	RF309-559	04/12/91
Northern Illinois Gas Company	RF272-19930	04/08/91
Parkchester Management Corporation	RF272-64604	04/10/91
Parkchester Management Corporation	RD272-64604	
Point Landing, Inc./International Trading and Transport, Ltd.	RR122-1	04/08/91
Riceland Foods, Inc.	RF272-2325	04/10/91
Riceland Foods, Inc.	RD272-2325	
Satterfield Construction Company, Inc. <i>et al.</i>	RF272-18695	04/09/91
Satterfield Construction Company, Inc.	RD272-18695	
Shell Oil Company/Coe Oil Service, Inc.	RF315-6	04/09/91
Shell Oil Company/Don Rose Oil Company, Inc. <i>et al.</i>	RF315-69	04/11/91
State of Missouri	RF272-19364	04/08/91
State of North Carolina	RF272-59933	04/11/91
Texaco Inc./Bob's Lynnwood Texaco <i>et al.</i>	RF321-2201	04/11/91
Texaco Inc./Leo Anger, Inc.	RF321-3515	04/12/91
Leo Anger, Inc.	RF321-3516	
Leo Anger, Inc.	RF321-10055	
Texaco Inc./St. Louis County Police Department <i>et al.</i>	R321-3800	04/11/91
Texaco Inc./Wallace and Wallace Fuel Oil	RF321-14733	04/09/91
USX Corporation—USS Division	RF272-75693	04/08/91
V.R. Dennis Construction Co. <i>et al.</i>	RF272-18819	04/09/91
V.R. Dennis Construction Co.	RD272-18819	
Wilson Tisdale Company	RF272-8345	04/10/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Appalachian Flying Service, Inc.	LEF-0029
B/J Delivery Service, Inc.	RF272-71321
Bryan Station Texaco	RF321-14273
Central Service, Inc.	RF321-6896
Circle 4 Texaco	RF321-14281
Circle 4 Texaco	RF321-14280
City of Fort Worth	RF300-15185

Name	Case No.
Dandeneau Country Store	RF321-10540
Gene's Texaco on Olive	RF321-4068
Hilltop Exxon	RF301-10154
Hudson & Whitaker Texaco	RF321-14272
Immaculate Conception Parish	RF272-77637
Jerry Carter	RF300-12561
McCoy Oil Company	RF307-10168
McHenry County, ND	RF272-85823
McHenry County, ND	RF272-86552
Sacred Heart Parish	RF272-77770
St. Andrew the Apostle Parish	RF272-77759
St. Ann R.C. Church	RF272-77644
St. Augustine Church	RF272-77792
St. Casimiro	RF272-77752

Name	Case No.
St. Joseph's Church	RF272-77738
St. Mark Parish	RF272-77649
St. Mary of the Assumption	RF272-78312
St. Mary Star of the Sea	RF272-77749
St. Roch's Church and School	RF272-77804
Syd's Hill Top Texaco	RF321-11356
The Church of St. Joseph	RF272-77753
University of New Mexico	RF321-8442
Warren Brothers' Texaco	RF321-14278

Copies of the full text of these decisions and orders are available in the

Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 13, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-11796 Filed 5-16-91; 8:45 am]

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Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of February 25 Through March 1, 1991

During the week of February 25 through March 1, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Glen Milner, 02/25/91, KFA-0294

Glen Milner filed an Appeal from a partial denial by the DOE's Albuquerque Operations Office of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the withheld material, pages II-2 and II-3 of the "The DOE Transportation Safeguards System," was exempt from mandatory disclosure pursuant to Exemption 3 of the FOIA as Unclassified Controlled Nuclear Information (UCNI) under section 148 of the Atomic Energy Act of 1954, 10 CFR part 1017, and DOE Order No. 5650.3. The DOE also determined that a limited amount of material was not UCNI, and could be released to Mr. Milner. Accordingly, the Appeal was granted in part.

Refund Applications

Archer Daniels Midland, 02/27/91, RF272-43109, RD272-43109

The DOE issued a Decision and Order granting an Application for Refund filed by Archer Daniels Midland (ADM) in the subpart V crude oil refund proceeding. ADM, a firm in the food processing industry, requested a refund as an end-user of refined petroleum products. A group of state governments

and two territories of the United States (the States) objected to the application, and attempted to rebut the end-user presumption of injury. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as ADM were injured by crude oil overcharges. The DOE granted ADM a refund of \$349,692, based on approved purchases of 437,114,494 gallons of petroleum products. A Motion for Discovery filed by the States was denied.

C.A. Rasmussen, Inc., 02/25/91, RF272-72077, RD272-72077

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to C.A. Rasmussen, Inc. (Rasmussen) based on the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Rasmussen is a general engineering contractor that purchased refined petroleum products to both fuel and repair heavy construction equipment and for use in street paving operations. Rasmussen requested a refund based, in part, upon its purchases of 106,869,000 gallons of bituminous concrete. Because bituminous concrete is not considered to be an eligible product in the crude oil refund proceeding, the applicant's claim was reduced by this amount. Because Rasmussen was an end-user of the products claimed, the firm was presumed injured. A group of state governments and two territories of the United States (the States) filed a Statement of Objections and Motion for Discovery. The DOE found that the States' filings were both insufficient to rebut the presumption of injury in this case and not relevant in light of the applicant's reduced claim. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Rasmussen was \$2,088.

Delois Garner, 02/28/91, RF272-64522

The DOE issued a Decision and Order denying Delois Garner's Application for Refund in the subpart V crude oil refund proceeding. Mrs. Garner applied for a refund based on her purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. However, Mrs. Garner was unable to document her purchase volume or provide a reasonable explanation of her estimation technique. Accordingly, the application was denied.

East River Corporation, 02/27/91, RF272-45581, RD272-45581

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to East River Corporation, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a New York realty management company, was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) filed a Statement of Objections to the application, contending that the firm was not injured as the result of regulations by the NY Rent Guidelines Board which allowed landlords to place surcharges on rent. The DOE found that the States failed to establish that the surcharges compensated landlords in general, or East River in particular, for increased fuel costs. Accordingly, the DOE granted East River a refund of \$18,172. The States also filed a Motion for Discovery in connection with the application, which was denied for reasons discussed in earlier subpart V crude oil Decisions. See, e.g., *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

F.W. Woolworth Company, 02/28/91, RF272-43997, RD272-43997

The DOE issued a Decision and Order granting a refund to F.W. Woolworth Company (Woolworth), a general merchandise retailer. Woolworth filed an Application for refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Woolworth were injured by crude oil overcharges. The DOE granted Woolworth a refund of \$30,445, based on its approved purchases of 38,055,913 gallons of petroleum products.

First Chemical Corporation, 02/25/91, RF272-28627, RD272-28627

The DOE issued a Decision and Order granting the subpart V crude oil refund application of First Chemical Corporation, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a chemical manufacturer, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected

to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. Accordingly, the DOE granted First Chemical a refund of \$24,856. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier subpart V crude oil Decisions. See, e.g., *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Liberty Mutual, 02/28/91, RF272-63350, RD272-63350

The DOE issued a Decision and Order granting refund monies from crude oil overcharges funds to Liberty Mutual based upon its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant was an end-user of the refined petroleum products and was therefore presumed injured. A consortium of 28 states and two territories (the States) filed a Statement of Objections and a Motion for Discovery with respect to Liberty Mutual's application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore the application was granted and the Motion for Discovery was denied. The refund granted to Liberty Mutual was \$17,008.

National Spinning Company, Inc., 03/01/91, RF272-10777, RD272-10777

The DOE issued a Decision and Order granting an Application for Refund filed by National Spinning Company, Inc. (National), a firm involved in the production of yarns. National filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence that National had been able to pass on the crude oil overcharges to its customers. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as National were injured by crude oil overcharges. The DOE granted National Spinning Company, Inc. a refund of \$4,780 based on its approved purchases of 5,975,354 gallons of petroleum products and denied the Motion for Discovery filed by the States.

National Steel Corp., 03/01/91, RF272-1106, RD272-1106, RF272-75497, RF272-75555, RF272-75568

The DOE issued a Decision and Order denying a refund from crude oil overcharge funds to four divisions of National Steel Corporation (National), because of an earlier waiver by an affiliate of National, The Permian Corporation, in the Stripper Well refund proceedings. A group of state governments and two territories of the United States (the States) filed a Statement of Objections and a Motion for Discovery with respect to one of the applicant's claims. The DOE held that because the States had not raised the waiver issue in their submissions, their submissions would not be addressed.

RTE Corporation, 02/28/91, RF272-58992, RD272-58992

RTE Corporation (RTE), a manufacturer of single and three phase pole and padmount distribution transformers and distribution substations for the electric utility market, filed an Application for Refund in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application on the basis of inferences from RTE's Annual Reports and letters from RTE's marketing managers, and filed a Motion for Discovery. The DOE concluded that the material submitted by the States was insufficient to rebut the end-user presumption of injury and that no convincing evidence had been produced to show that RTE had been able to pass on any crude oil overcharges. In view of that determination, the States' Objections to the application were rejected and the related Motion for Discovery denied. The DOE granted a refund of \$30,203, based on purchases of 37,753,946 gallons of refined petroleum products.

Shepherd Construction Co., Inc., 02/25/91, RF272-45502, RD272-45502

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Shepherd Construction Co., Inc. in the subpart V crude oil refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of \$97,906. The DOE found that the industry-wide econometric data submitted by a group of 28 states and 2 territories of the United States (the States) did not rebut the presumption that the applicant was injured by crude oil overcharges. The States also filed a Motion for Discovery in connection with the application, which was denied for reasons discussed

in earlier subpart V crude oil Decisions. See, e.g., *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Swift Eckrich, Inc., 03/01/91, RF272-60956, RD272-60956

The DOE issued a Decision and Order granting a refund in the subpart V refund proceeding to Swift Eckrich, Inc. (Swift) based upon its purchases of refined petroleum products from August 19, 1973 through January 27, 1981. The applicant was an end-user of the refined petroleum products and was, therefore, presumed injured. A group of state governments and two territories of the United States (the States) filed a Statement of Objections and a Motion for Discovery with respect to Swift's Application. The DOE found that the State's filing was insufficient to rebut the presumption of injury. Therefore the Application for Refund of Swift was granted and the Motion for Discovery was denied. The refund granted to Swift was \$26,362.

Team Tankers A/S Atlantic Cargo Services, 02/28/91, RF272-22390, RD272-22390, RF272-23534, RD272-23534

The DOE granted two Applications for Refund filed by foreign flagship carriers operating ocean-going vessels in the foreign commerce of the United States in the subpart V crude oil refund proceeding. Rejecting arguments raised by a group of state governments and territories of the United States (the States), the DOE concluded that (i) the applicants were eligible to receive a crude oil refund even though they were under foreign ownership and (ii) foreign ocean carriers were not automatically able to pass through increased bunker fuel costs to their customers. As end-users of the petroleum products involved, the applicants were presumed injured by the crude oil overcharges, and the States failed to rebut that presumption. The total of the refunds granted in this Decision was \$44,391. The DOE also denied the two Motions for Discovery filed by the States for reasons discussed in previous Decisions.

Texaco Inc./Industrial Towel & Uniform, 02/28/91, RF321-5389

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Industrial Towel & Uniform, a consumer of Texaco products. The application was filed by Cintas Corporation, which acquired Industrial Towel in March 1980. Cintas sought a refund with respect to purchases by Industrial Towel throughout the August 1973 to January 1981 refund period. The

DOE noted that, generally, the owner of the firm that purchased the Texaco products is entitled to the refund, and that this right is not normally transferred to a successor firm, unless the sales contract specified potential refunds as one of the assets being transferred. The DOE found that Cintas had not rebutted the presumption that the right to a refund with respect to purchases made prior to its acquisition of Industrial Towel remained with its prior owner. Accordingly, the applicant was granted a refund based upon purchases by Industrial Towel after March 1980, the date it was acquired by Cintas. The total refund granted was \$164.

Texaco Inc., Smith Bro. Oil Co., Inc./ Fred P. Smith, Smith Bros. Texaco, 02/27/91, RF321-4557, RF321-4558, RF321-4560, RF321-4561, RF321-4562, RF321-0029

The DOE issued a Decision and Order concerning the Applications for Refund that Fred P. Smith, a Texaco consignee and jobber, filed in the Texaco Inc. special refund proceeding. In determining the appropriate volume upon which to calculate the refund, the DOE reduced Mr. Smith's claim by volumes involved in "Delivery For Our Account" transactions since these volumes did not constitute purchases. Instead of making an injury showing to receive his full allocable share, Mr. Smith elected to limit his claim to the larger of \$10,000 or 50 percent of his allocable share. Mr. Smith was granted a total refund of \$25,744 (\$21,081 principal plus \$4,663 interest). In addition, the OHA dismissed a Motion for Reconsideration that Mr. Smith filed on behalf of his retail outlet since those volumes were already included in his consignee volumes and the applicant was entitled to only one refund for the same product.

Texaco Inc./Tenbarge Oil Company, 02/25/91, RF321-5343

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by Tenbarge Oil Company, a corporation, that was a consignee and reseller of Texaco products. Prior to December 1975, Tenbarge was a sole proprietorship. The owner incorporated the firm in December 1975 and sold his interest in the corporation several years ago. In its application, the present owners of the corporation sought a refund based upon purchases by both the corporation and the predecessor sole proprietorship. The DOE noted that, generally, the owner of the firm that purchased the Texaco products is entitled to the refund, and that this right is not normally transferred

to a successor firm. However, where the purchaser is a corporation, the right to the refund remains with the corporation even though the stock of the corporation may be sold. The DOE found that the applicant had not rebutted the presumption that the right to a refund with respect to purchases by the sole proprietorship remained with its owner. The DOE found, however, that the current owners of the corporation were entitled to a refund based upon the corporation's purchases. Accordingly, Tenbarge was granted a refund based upon purchases by the firm after December 1975, the date of incorporation.

Texaco Inc./University Texaco, 02/26/91, RF321-1823, RF321-9710

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding by the owners of a retail outlet that was a direct purchaser of Texaco refined products. One application, filed by Charles L. Green, the current owner of the outlet, was denied on the grounds that the applicant did not own the station during the consent order period and had failed to establish that the right to the refund was assigned to him by the owners of the station during the refund period. The other application, filed by Judith V. Zimmermann, the wife of the owner of the outlet during the refund period, was approved. Mrs. Zimmermann did not seek a refund greater than the \$10,000 small claims threshold established in the Texaco proceeding; accordingly she was not required to demonstrate injury. The total refund amount granted in this Decision was \$3,964, representing \$3,246 in principal and \$718 in interest.

The Walt Disney Company, 02/25/91, RF272-22537, RD272-22537

The DOE issued a Decision and Order granting the subpart V crude oil refund application of the Walt Disney Company, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, an operator of theme parks, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found

that the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. Accordingly, the DOE granted Walt Disney a refund of \$35,186. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier subpart V crude oil Decisions. See, e.g., *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Union de Transports Aeriens, et al., 02/26/91, RF272-1147 et al.

Four foreign airlines, Union de Transports Aeriens, Royal Air Maroc, Scandinavian Airlines Systems, and Aeronaves de Mexico, S.A. (collectively "the Airlines"), filed Applications for Refund in the subpart V crude oil refund proceeding based upon their purchases of non-bonded aviation fuel which their planes consumed as fuel. A group of thirty state governments and two territories of the United States (the States) filed objections opposing the receipt of the refunds by the Airlines, on the basis that: (i) Sales of non-bonded aviation fuel to the Airlines were price-exempt "export sales" under 10 CFR 212.53 and, as a matter of law, foreign firms cannot claim refunds since they never were intended to benefit under DOE's price control program, and (ii) as a factual matter, the Airlines were able to pass through a substantial part of increased fuel costs by virtue of regulations administered by the Civil Aeronautics Board (CAB) and therefore were not injured by crude oil overcharges. In connection with these objections, the States also filed a Motion for Discovery in each proceeding. In considering the States' objections, the DOE determined that: (i) Sales of non-bonded aviation fuel were specifically excluded from the "export sales" exemption under 10 CFR 212.53(c), and the Airlines were not disqualified from receiving refunds simply because of their foreign status, and (ii) the CAB regulations cited by the States did not constitute a means to automatically pass through increased fuel costs; nor had the States established that the Airlines systematically passed through increased fuel costs as a matter of industry practice. On the basis of these determinations, the DOE further determined that the States had failed to justify discovery with respect to the Airlines' refund claims. Accordingly, the Airlines' Applications for Refund were approved and the States' Motions for Discovery were denied. The total of the refunds granted in the decision was \$332,544.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Co./ Penn Central Transportation Company Koppers Industries.	RF304-4170..... RF304-10439 ...	02/28/91
Atlantic Richfield Co./ Stump's Camping & Auto Outlet <i>et al.</i>	RF304-11062 ...	02/27/91
Atlantic Richfield Co./ Wallers Service Center.	RF304-12163 ...	02/28/91
City of Petersburg.....	RF272-72232 ...	02/26/91
Clark Community Oil Company <i>et al.</i>	RF272-61899 ...	02/25/91
Exxon Corporation/ City of Clifton	RF307-4198..... RF307-10170 ...	02/25/91
Citadel Corporation.		
Gulf Oil Corp./Al Roco Service Station <i>et al.</i>	RF300-11531 ...	02/28/91
Gulf Oil Corp./ Beckert's Gulf Service <i>et al.</i>	RF300-9077.....	03/01/91
Gulf Oil Corp./Jimmy Mathews Gulf <i>et al.</i>	RF300-11769 ...	03/01/91
Gulf Oil Corp./Mintzer Petroleum Corporation.	RF300-15646 ...	02/28/91
Gulf Oil Corp./Pauline Anderson Grocery <i>et al.</i>	RF300-11179 ...	03/01/91
Livingston County Central Services <i>et al.</i>	RF272-64011 ...	02/28/91
Saline County Highway Dept. <i>et al.</i>	RF272-65329 ...	02/26/91
Texaco Inc./By-Pass Texaco <i>et al.</i>	RF321-2209.....	02/27/91
Texaco Inc./Palingo Oil Co., Inc <i>et al.</i>	RF321-6200.....	02/27/91
Texaco Inc./Primerica Corporation <i>et al.</i>	RF321-3601.....	02/27/91

Dismissals

The following submissions were dismissed:

Name	Case No.
B.E. & H. Oil.....	RF313-325
C.W. & P.J. Brown Oil Co.....	RF313-323
Colonial Oil Industries, Inc.....	RF313-328
Des Moines Asphalt.....	RD272-42154
E.J. Argenbright.....	RF321-3890
Ed Nourse Oil Company.....	RF300-6157
Fuller's Texaco.....	RF321-265
Government Accountability Project...	LFA-0100
Hill Top Texaco.....	RF321-2702
Johnson's Quintard Gulf.....	RF300-15211
Kalinas Texaco.....	RF321-12015
Larry's Exxon.....	RF307-7184
Larry's Exxon.....	RF307-862
Lawley Oil Company.....	RF313-326
Levear Centerville Service.....	RF321-11003

Name	Case No.
Lopez Oil Corp.....	RF300-5999
Mel's Texaco.....	RF321-6917
New Dixie Oil Corporation.....	RF300-8779
New York Telephone.....	RF272-11932
Northridge Texaco.....	RF321-2937
Northwest Texaco Truck Center.....	RF321-8337
Olive Drive Texaco.....	RF321-12831
Perimeter Petroleum.....	RF313-324
Pryor's Texaco.....	RF321-3179
Ron & Al's Texaco.....	RF321-3724
Ron & Ed's Service, Inc.	RF321-1374
State of Texas.....	LEG-0002
Summers-Taylor, Inc.	RD272-43741
Summers-Taylor, Inc.	RF272-43741
Transcontinental Shell.....	RF315-10002
Wals Texaco.....	RF321-3986

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. The are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 13, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-11795 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

Strengthening the Nuclear Safety Standards Program for DOE's Defense Nuclear Facilities; Response to Recommendation of the Defense Nuclear Facilities Safety Board

AGENCY: Office of Nuclear Energy; Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy hereby publishes notice of the response of the Secretary of Energy (Secretary) to Recommendation 91-1 of the Defense nuclear Facilities Safety Board, 56 FR 10546 (March 13, 1991), concerning strengthening the nuclear safety standards program for DOE's defense nuclear facilities. The Department hereby requests public comment on the response of the Secretary to Recommendation 91-1.

FOR FURTHER INFORMATION CONTACT: William H. Young, Assistant Secretary for Nuclear Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before June 17, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

William H. Young,

Assistant Secretary for Nuclear Energy.

Dear Mr. Conway: Your letter of March 7, 1991, forwarded the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 91-1 expressing the Board's concern for the rate of progress at which nuclear safety standards are being issued within the Department. The DOE response to each of the issues raised by that Recommendation is enclosed.

The Department has concluded that assessment of penalties under the Price-Anderson Amendments Act of 1988 can best be accomplished using standards that have been subject to the notice-and-comment rulemaking procedures of the Administrative Procedure Act. However, as you know, rulemaking is a lengthy process. Therefore, in order to ensure DOE contractors have up-to-date guidance concerning the operation of DOE facilities in the interim, I have directed that updated DOE Orders be issued without delay. In previous correspondence, I provided a plan for developing nuclear safety rules, safety guides, and DOE Orders. An implementation plan will be forwarded to the Board describing the application of standards throughout the Department.

In accordance with section 315(d) of the Atomic Energy Act of 1954, as amended, this response will be published in the Federal Register.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Enclosure.

Response to DNFSB Letter of March 7, 1991, Recommendations of DNFSB Regarding Standards Development

On March 7, 1991, the Defense Nuclear Facilities Safety Board (DNFSB) issued Recommendation 91-1. The DNFSB recommendations and DOE's response are as follows:

1. That the Department expeditiously issue a formal statement of its overall Nuclear Safety Policy.

The Department accepts this recommendation. A formal statement of the Department's overall Nuclear Safety Policy was prepared and submitted for internal review on April 15, 1991, and is expected to be issued by July 15, 1991.

2. That increased attention be given to the qualifications and background of managers and technical staff assigned to the development and implementation of standards and that the numbers of

personnel suited to this activity be increased commensurate with its importance.

The Department accepts this recommendation. On January 31, 1990, the responsibility for the development and coordination of Departmental policy for nuclear facility safety, including standards development, was centralized under the Assistant Secretary for Nuclear Energy (ASNE). An Office of Nuclear Safety Policy and Standards (ONSPS) was established, reporting directly to the ASNE, with the primary mission to develop, coordinate, and maintain DOE standards on nuclear facility safety. Starting at 10 professionals, the ONSPS staff increased to its FY 90 ceiling of 20. The FY 91 ceiling is 25 professionals, and recruiting has resulted in filling 4 of the 5 new positions to date. The FY 92 ceiling is 36. Almost half of the professional staff have NRC experience, with the remainder having backgrounds divided between industry and the Department. The Department will continue to review the staffing status and needs of the organizations at Headquarters that are developing standards and will revise them as necessary. The Department recognizes the Board's concern with respect to implementing an effective standards program through the entire Department complex of field and contractor operations. The Department will submit an implementation plan to the Board describing its overall approach to develop and implement standards throughout the DOE complex.

3. That standards program officials be given direct access to the highest levels of DOE management.

The Headquarters standards program officials have direct access to the highest levels of DOE management. The Secretary has assigned responsibility for the development of nuclear safety and radiological protection standards to the Assistant Secretaries for Nuclear Energy and for Environment, Safety and Health, respectively. The Department's standards program officials for nuclear safety and radiological protection report directly to these senior officials. Furthermore, the Secretary has established the Senior Nuclear Managers group consisting of the Department's highest level of managers responsible for nuclear activities. The Senior Nuclear Managers have been charged with coordinating and overseeing the upgrading of the Department's nuclear safety directives. In this and in other matters, the Senior Nuclear Managers Group has been particularly effective in resolving

differences in the Department and reaching a uniform consensus. The Department believes that this recommendation has been fulfilled.

4. That the Department critically reexamine its existing infrastructure for standards development and implementation at Headquarters to determine if organizational or managerial changes are needed to (1) emphasize the priority and importance of standards to assuring public health and safety; (2) expand the program to facilitate the rapid development and implementation of standards; and (3) streamline the DOE approval process for standards.

The Department accepts this recommendation. The Department has been critically examining its infrastructure for standards development and implementation at Headquarters. The Department has emphasized the priority and importance of standards for assuring public health and safety by assigning to the Senior Nuclear Managers group the responsibility to oversee and coordinate the upgrading of the Department's nuclear safety directives.

Secretary of Energy Notice (SEN-6-series) assigns to line management full responsibility for environmental protection, radiation and reactor safety, and worker and public health and safety. The Secretary also established nuclear safety self-assessment offices for the line managers involved in nuclear safety matters and a separate Office of Nuclear Safety which advises the Secretary on whether line management and its self-assessment functions are adequately assuring nuclear safety.

The DOE process for approval of standards has been streamlined as discussed in 3. above.

The implementation plan will provide additional information relative to this recommendation.

5. That the Department reexamine the corresponding organizational units at DOE's principal Operations and Field Offices and DOE contractor organizations to determine if those organizations' standards infrastructure, responsibilities and resources would also benefit from changes to reflect improvements at Headquarters which strengthen and expedite standards development and implementation.

The Department accepts this recommendation. The implementation plan will specify the Department's actions for assessing the Operations Offices, Field Offices, and contractor organizations to determine if changes

should be made to reflect improvements at Headquarters.

6. That DOE review all the findings and conclusions of both the Executive Summary and Volume 2 of the MITRE report, identify which findings and conclusions it considers valid and appropriate in DOE's Response to this set of Recommendations, and subsequently address those findings and conclusions in the Implementation Plan.

The Department accepts the findings and conclusions of the MITRE Executive Summary. These conclusions reemphasize the deficiencies identified in earlier reviews. The MITRE report notes that it considered active DOE Orders as of February 1990, and that DOE had taken various initiatives to upgrade and revise its safety requirements, but that the revised requirements were brought to its attention after MITRE had essentially completed its review. Nevertheless, although the Department believes that the new safety directives prepared and issued subsequent to the MITRE review rectify the concerns identified by MITRE, the conclusions reached by MITRE in the Executive Summary are still valid for those safety directives remaining to be revised or implemented.

The approach and scope of Volume 2 of the MITRE report focused on characterizing the differences between DOE and NRC requirements and summarizing insights gained from those comparisons. Thus, the findings and conclusions of Volume 2 are not as clearly defined as those in the Executive Summary. Attachment A. presents the findings and conclusions by MITRE and provides comments on these to identify to the Board the Department's understanding of these MITRE insights.

The implementation plan will describe the program to revise the safety directives.

7. That DOE expedite the issuance of revised safety orders, directives, or other requirements as a means of addressing the need for substantive guidance on the wide variety of safety requirements, while DOE is promulgating rules.

The recommendation is accepted. The Department has concluded that the implementation of the Price-Anderson Amendments Act of 1988 can best be accomplished using the rulemaking procedures of the Administrative Procedure Act. However, rulemaking is a lengthy process. In order to ensure DOE contractors have up-to-date guidance concerning the operation of DOE facilities, the Secretary has directed that updated DOE Orders be issued without delay.

In May 1990, the Secretary's Task Force on Nuclear Safety Directives identified ten subjects that should receive priority attention with respect to upgrading the safety directives. These

ten subjects were subsequently chosen for rule development. Six of these ten subjects are now covered by DOE Orders, and the remaining four Orders are, or will be, in the last stage of formal

DOE review by May 15, 1991. The status of the corresponding Nuclear Safety Orders is shown on the following page.

NUCLEAR SAFETY ORDERS BEING DEVELOPED IN PARALLEL WITH RULES

Title	December schedule	Current status	Final issuance
Radiation Protection.....	Issued.....	Issued.....	Issued.
Accreditation of Performance-Based Training.....	Issued.....	Issued.....	Issued.
Conduct of Operations.....	Issued.....	Issued.....	Issued.
Occurrence Reporting and Processing of Operations Information.....	Issued.....	Issued.....	Issued.
Personnel Training.....	February 1991.....	Issued.....	Issued.
Maintenance Management.....	February 1991.....	Issued.....	Issued.
Quality Assurance for DOE Nuclear Activities.....	June 1991.....	March 21, 1991*.....	September 1991
Unreviewed Safety Questions.....	June 1991.....	April 5, 1991*.....	September 1991
Technical Safety Requirements.....	June 1991.....	May 15, 1991*.....	October 1991.
Safety Analysis Reports.....	September 1991.....	May 15, 1991*.....	October 1991

*Issued for Formal Coordination.

Attachment A

DOE Response to the General Conclusions of the MITRE Report General Conclusions

1. The DOE Orders, which are the principal means for establishing safety requirements for defense nuclear facilities, lack the systematic approach and coherence necessary for understanding DOE's safety management philosophy.

A methodology for establishing a coherent and systematic approach to assuring safe operation of DOE facilities was described to the Board on December 10, 1990, subsequent to the MITRE report. Upper-tier requirements establish broad objectives which are then incorporated with increasing detail in lower-level documents. A Nuclear Safety Policy, DOE Nuclear Safety Orders, and consensus and DOE standards provide an appropriate progression in the level of detail. The above methodology is also being used for the Nuclear Safety Rules and accompanying Safety Guides which are being prepared in parallel with DOE Nuclear Safety Orders.

2.A. In many areas pertinent to safety, the DOE Orders do not provide specific requirements and supporting guidelines for implementing DOE's safety objectives. SR Orders specifically applicable to defense nuclear facilities at the Savannah River Plant do not add significantly to the substance or specificity of DOE safety requirements; a great deal is left to be defined and interpreted by the DOE contractor operating the facilities.

The Department has undertaken the task of preparing new DOE Orders and revising existing Orders to improve the specificity of its safety directives. Since

January 1990, four new DOE Orders were issued, one existing Order was significantly revised, and two new Orders were issued for formal coordination. In addition, four new Orders will be issued for Department coordination before the end of May 1991.

The priority for determining the Orders that have to be prepared or revised is based on the need for new or improved requirements as recommended by external reviews such as those undertaken by the National Academies of Science and Engineering (NAS/NAE) and the MITRE report prepared for the DNFSB. The priorities established by DOE for the Rules and Orders have been provided to the DNFSB in meetings with NE staff and in separate correspondence.

In regard to the issuance of Operations Office Order Supplements, the Department agrees with the DNFSB that the supplements do not add significantly to the substance or specificity of the DOE Orders. In his memo to the Operations Office Managers dated February 25, 1991, the Under Secretary directed them not to issue supplementary DOE Orders and indicated that DOE Orders should be the only documents specifying requirements on the contractor. The wide diversity of DOE facilities limits the detail that is practical for insertion into DOE rules and/or Orders. However, where necessary, detailed implementation plans will be developed by contractors based on direction from DOE, and these implementation plans will be reviewed and approved by DOE line management.

2.B. Organizational responsibilities assigned in the DOE Orders have not

been revised to reflect significant recent changes.

The revised responsibilities of Departmental elements are, however, being included in the DOE Orders as they are being prepared or modified.

The Department has recognized that internal DOE organizational responsibilities should not be provided in rules. As part of the rulemaking effort, the Department is preparing a DOE Manual of Responsibilities in which the responsibilities of all Departmental elements for a given technical topic are defined. This is similar to the NRC practice of providing such information in the NRC Manual.

3. Certain DOE Orders that address topics important to facility safety do not focus on safety. This may be evidence of improperly defined objectives and lack of due attention to the safety functions of the facilities.

The specific DNFSB concerns highlighted in their discussion of this conclusion are with two technical areas, Fire Protection and Quality Assurance. To avoid duplication, the DOE response to these concerns are provided later under each specific technical topic.

4.A. The DOE Orders do not provide criteria and guidelines for accomplishing their stated objective to apply "uniform standards, guides, and codes which are consistent with those applied to comparable licensed nuclear facilities."

In the discussion of this conclusion, MITRE points out that the basic requirement to apply applicable NRC design and siting criteria is limited to new construction, during major modifications to an existing facility, or when it is determined that safety can be significantly improved. In the past these basic requirements were generally implemented for new facilities such as

the Fast Flux Test Facility, the upgrade to the Annular Core Research Reactor and similar new or modified facilities. This was primarily accomplished through preparation of Safety Analysis Reports that followed the NRC Regulatory Guide for Standard Format and Content of Safety Analysis Reports. By following the standard format and content, Regulatory criteria and standards were addressed in the Safety Analysis Reports, and the review of these reports provided a means to judge the adequacy of application of NRC criteria.

This general approach, however, has not worked with older DOE facilities that were designed and built prior to the existence of Standard Format and Content guidelines. In addition, the application of new standards to existing facilities during modifications has not always been successfully accomplished.

To provide a logical and systematic method for applying new standards and criteria to existing facilities, the recently developed Backfit Policy establishes a process for arriving at backfit decisions. In addition, both a new rule and a new DOE Order on Safety Analysis Reports are being prepared. The new rule and Order will require Updated Safety Analysis Reports to be prepared for existing facilities which will permit judging the application of current criteria and standards to existing as well as new facilities.

4.B. There is no DOE guidance to suggest that its requirements overcome the deficiencies or inconsistencies that may be present in the requirements for licensed nuclear facilities, especially when referencing those requirements.

The discussion of this conclusion in the MITRE report expresses concern that the application of NRC requirements would result in application of standards that apply only to "safety-related and other important-to-safety" systems and thereby neglect non-safety-related equipment such as balance of plant equipment. The report also concludes that NRC's requirements for nonreactor nuclear facilities are not as comprehensive as those for the power reactors. The report suggests that DOE adopt "a total systems approach that would recognize and overcome any weaknesses in NRC's requirements."

In the Department's development of new rules and Orders it is the intent that safety analyses for new and existing facilities take a balanced approach to the application of standards and requirements to all plant systems and equipment. Recognizing the importance of formal conduct of operations and maintenance to the safe and efficient

operation of DOE's nuclear facilities, both rules and DOE Orders have been developed to address the operation and maintenance of all plant systems and equipment. In addition, DOE has recognized the importance of standards and the fact that NRC's requirements for nonreactor nuclear facilities are not as comprehensive as those for power reactors. Accordingly, the Department is reestablishing a standards program to address the need for additional guidance in areas beyond those traditionally applied to only safety-related equipment.

5. The DOE Orders require compliance with very few mandatory nuclear safety standards for existing reactors or nonreactor facilities.

DOE has prepared draft DOE Order 1300.2A, Department of Energy Standards Program, which was transmitted to Departmental elements on March 26, 1991, for informal coordination. This draft Order emphasizes the Department's proposed policy in regard to the use of national and international consensus standards in the design, construction, and operation of all its facilities, projects, and programs. The draft Order requires that line management ensure and document the use of standards in the design, construction, and operation of all DOE facilities.

In addition, in an effort to improve the use of national and international consensus standards throughout the Department, DOE will issue in June 1991, a document which lists the codes, regulations, and consensus standards applied to commercially licensed reactors which have potential applicability to the Department's reactors. It is DOE's intent that this document be used as a resource by DOE line program management in evaluating and determining specific standards applicable to the design and/or modification of facilities under their cognizance. DOE is also in the process of preparing a similar document for nonreactor nuclear facilities which should be available in September 1991. The standards selected will be identified in the design or safety documentation such as System Design Descriptions or Safety Analysis Reports that will be approved by DOE.

The efforts discussed above, in conjunction with the development of the DOE Backfit Policy will significantly improve the use of standards throughout the Department's operations.

DOE Response to the Specific Conclusions of the MITRE Report Specific Conclusions

Design Standards

1. The DOE Orders do not require existing reactors to meet any mandatory design standards, and existing nonreactor facilities are required to comply with only a very small set of design standards. The Orders require that new construction of reactors and nonreactor facilities conform with a much larger body of standards, but these standards are applied at existing facilities only when modifications are made or when DOE determines that safety can be significantly improved. Moreover, the Orders do not provide procedures or criteria for making the determination that safety can be significantly improved.

See response to General Conclusion #5.

2. The DOE Orders are not clear about the criteria for selecting the structures, systems, and components that must satisfy mandatory standards. One Order introduces the term "safety or safety-related" equipment, but does not include a definition of safety-related, and the other Orders do not provide additional guidance for identifying this type of equipment in reactors. For nonreactor facilities, the term "safety class items" is defined, but the relationship between safety class items and safety-related items is unclear. This is of particular concern because of potential confusion about how consensus standards are to be applied.

As part of the Department's decision to improve the DOE Order system and the requirements therein, one of the major objectives will be to assure consistent use of terminology. DOE Orders 5480.5, 5480.6, and 6430.1A will be revised as improvements are made to the technical areas highlighted in the MITRE report to ensure that the specific terminology, in question here, will be consistent.

See also response to General Conclusion #4.B.

3. In some DOE Orders, mandatory design standards are applied only to a subset of all plant equipment, and there are no requirements for the remaining plant equipment. For modifications to existing facilities, one DOE Order requires compliance with mandatory standards only when "safety or safety-related structures, systems, or components" are involved. Another DOE Order that applies exclusively to new construction and modifications of nonreactor facilities restricts the scope of the equipment covered by its

requirements to those identified as "safety class items."

See response to the MITRE Specific Conclusions #1 and #2 above.

4. The DOE Orders do not provide specific requirements or review criteria to implement general guidelines relating to the design of structures, systems, and components for either reactors or nonreactor facilities.

The recent effort undertaken by the Department to prepare Rules and new DOE Orders as well as to revise existing DOE Orders in the technical areas discussed in the MITRE report will provide specific requirements and review criteria for the Department to use in the implementation of improved guidelines relating to the design, construction, and operation of the Department's facilities. Many of the new Rules and Orders, in addition, require the contractors to prepare implementation plans based on a required format which are then approved by the Department's line program organizations. These approved plans then provide the bases for compliance enforcement.

5. Several specific DOE references to mandatory and reference standards need to be revised to reflect the current versions of those standards. For civilian nuclear facilities, the NRC regulations and regulatory guidance documents provide extensive references to consensus standards, and the regulations provide the mechanism for maintaining the currency of endorsements of principal consensus standards.

As part of the Department's continuing effort to improve the DOE Order system and the requirements therein, the existing DOE Orders will be revised to reflect the current version of consensus standards, as appropriate. It should be recognized, however, that some older standards, e.g., in the training area, are referenced because they contain more appropriate or more stringent requirements than newer versions of the standards.

Quality Assurance

6. While both the DOE and NRC refer to the same principal consensus standard on quality assurance, DOE's quality assurance program requirements lack the systematic organization and strength of language evident in NRC's requirements. For example, NRC's detailed regulations on this subject are supplemented by Regulatory Guides that address additions or modifications to the consensus standards. Also, NRC has specified formal procedures for reviewing and approving changes to the licensee's quality assurance program.

DOE's Quality Assurance (QA) requirements established in DOE Order 5700.6B are being revised. The revised Draft Order 5700.6C was sent to all Departmental elements for formal coordination in March 1991. The revision is consistent with the latest version of NRC's Standard Review Plan, chapter 17.3, on QA. This revised Order parallels a proposed QA Rule (10 CFR 830.120), which is expected to be published for comment in the Summer of 1991, and its accompanying Safety Guide. The International Atomic Energy Agency (IAEA) is also making revisions to its QA standards similar to the revised Draft Order 5700.6C.

7. DOE's safety objective is not well integrated into the stated purpose of its quality assurance program. While the principal DOE objective is operational success, the principal objective of NRC's mandated requirements is integrity of safety-related equipment, although as discussed earlier, the focus of NRC's requirements on safety-related functions of licensed facilities is also a limitation.

DOE's safety objective will be integrated into the stated purpose of its QA program in the revised DOE Order 5700.6C, the proposed Rule 830.120, and the Rule's companion Safety Guide.

8. The DOE General Design Criteria, that apply to new construction or modification of nonreactor facilities provide guidance on safety classification for equipment; however, they do not specify the gradation in quality assurance standards that is applied.

As noted in the resolution to MITRE conclusion #6, the Department's revised Order 5700.6C, the proposed Rule 830.120, and the Rule's companion Safety Guide are consistent with the latest version of NRC's Standard Review Plan. In addition, the proposed rule will require a graded approach to items and processes depending upon the risk associated with those items and processes.

Safety Analysis and Review

9. DOE requirements on this subject are scattered among and within the applicable Orders. The SR Orders introduce new terms and definitions. For example, although DOE Orders define the terms "significant modification" and "unreviewed safety question," SR Orders introduce different definitions and language to describe the use of these concepts. This adds confusion to the interpretation of the DOE Orders.

In his memo to the Operations Office Managers dated February 25, 1991, the Under Secretary directed them to discontinue the practice of writing supplements and indicated that DOE

Orders should be the only documents specifying requirements to the contractor.

10. Both DOE and NRC require that plant changes involving unreviewed safety questions be accompanied by safety analyses; however, DOE's definition of an unreviewed safety question differs from the NRC definition and would result in fewer safety analyses.

The Department is issuing rules for many of the technical topics discussed in the MITRE report, including Unreviewed Safety Questions. In addition, a DOE Order on Unreviewed Safety Questions has been transmitted for formal coordination Departmentwide. The definition of Unreviewed Safety Question in both the Rule and the Order has been revised to reflect the NRC definition.

11. The most significant difference between the DOE and NRC requirements for existing facilities is that DOE Orders provide virtually no guidance concerning the content, evaluation methodologies, and review criteria for Safety Analysis Reports. NRC has very extensive and substantive guidance on the subject. Furthermore, DOE does not require periodic updates to keep the Safety Analysis Report current with facility configuration and operation; NRC requires updates on an annual basis.

DOE has drafted a proposed rule, 10 CFR 830.110, which relates to DOE contractor requirements for preparing Safety Analysis Reports for nuclear facilities (reactors and nonreactor nuclear facilities). Because the rulemaking process is lengthy in nature, DOE will also issue an Order which parallels the proposed rule.

The draft Rule and its guidance document will provide substantive guidance on Safety Analysis Report content. DOE does not intend to provide a "Standard Review Plan" for the evaluation and review of Safety Analysis Reports which would be similar to that utilized by the NRC for evaluating and reviewing components or systems of nuclear powerplants, since the Safety Guides that will be issued with the new rules will provide sufficient information to serve the purpose of the NRC Standard Review Plan.

With regard to Safety Analysis Report updating, the proposed Rule and Order will require that contractors annually review the changes or modifications made to nuclear facilities to determine if the Safety Analysis Reports need to be updated rather than requiring annual updates. The Department considers this

requirement to review and update as necessary to be prudent from both a safety and resource standpoint.

12. The draft DOE Order on this subject would specify the methodologies for safety evaluation much more precisely than do the existing Orders; however, it would not significantly supplement the safety review and acceptance criteria.

See response to MITRE conclusion #11.

Operations

13. A major weakness in the existing Orders is the absence of detailed guidelines on the scope, content, and format of the technical specifications for reactor facilities and operational safety requirements for nonreactor nuclear facilities. Operational safety requirements are required to be concise and commensurate with the potential risks involved. While DOE Order 5480.6 states that the NRC Technical Specifications requirements given in 10 CFR 50.36 shall apply for DOE-owned reactors, it does not provide guidelines on how these requirements are to be met. Furthermore, DOE has no Order or generic document similar to NRC's Standard Technical Specifications that licensees use for formulating and documenting plant-specific technical specifications as required in 10 CFR 50.36. It is also significant that technical specifications on effluents to the environment are not explicitly covered in DOE's general requirements, NRC, on the other hand, provides detailed format and other guidance on the standard technical specifications for each major reactor type. Its regulations provide numerical guidelines for design objectives and limiting conditions for operation with respect to reactor effluents. Also, violations of technical specifications at civilian nuclear facilities can result in civil penalties, depending on the safety significance involved.

The draft DOE Rule, 10 CFR 830.320, covers the requirements for the development of Technical Safety Requirements (terminology which replaces Technical Specifications and Operational Safety Requirements) for DOE nuclear facilities.

The proposed Rule is similar to 10 CFR 50.36 and builds on NRC's experience with its implementation as well as the NRC's Technical Specification Improvement Program (TSIP). The Department's proposed Rule and Order are modeled after the NRC TSIP.

The Safety Guide which accompanies the draft rule provides extensive guidance on the format and content of

Technical Safety Requirements documents and, similar to the NRC philosophy, emphasizes keeping the content of the Technical Safety Requirements to a minimum to make the document user-friendly.

A draft rule, 10 CFR part 820, has also been prepared by DOE to articulate the Department's enforcement process which could result in civil penalties for contractor violations of Technical Safety Requirements depending on the safety significance involved. Violations of Technical Safety Requirements will subject contractors to potential civil penalties.

14. DOE requirements for operator selection, qualification, and training as stated in the Orders are not as detailed as those of NRC. For production reactors, the applicable Order selectively applies consensus standards. DOE recognizes the use of partial or full-scope simulators for training; however, the latter are not mandatory for production reactors. Also, there is nothing in the existing Orders that parallels the detailed NRC criteria for examining the competency of reactor operators. Operators are certified by DOE's contractors, whereas operators of civilian reactors are licensed by NRC. Furthermore, DOE staffing requirements for reactor control rooms are different from those for civilian power reactors. For nonreactor facilities, qualification requirements are not explicit; verification, rather than certification, of personnel qualification and training is required.

The Department has recently issued DOE Order 5480.20, "Personnel Selection, Qualification, Training, and Staffing Requirements at DOE Reactor and Non-Reactor Nuclear Facilities." This Order contains detailed requirements for Category A and B reactors and nonreactor nuclear facilities that are more detailed than the NRC requirements contained in 10 CFR part 55. In addition, the requirements for DOE's production, test and research reactors are equivalent to the guidance contained in NRC Regulatory Guide 1.8. The Department's requirements for nonreactor nuclear facilities are also more specific and detailed than NRC rules or Regulatory Guides.

The Department has also established a formal training accreditation program that is modeled after the commercial nuclear power industry's program. Although the industry program is only applicable to power reactors, the Department has implemented this program at our larger nonreactor nuclear facilities as well. The accreditation program is required through DOE Order 5480.18, "Accreditation of Performance-

Based Training for Category A Reactors and Nuclear Facilities."

These two DOE Orders on training provide a basis in policy and requirements that will provide assurance of the content and quality of training programs as well as the competency of operators, maintenance, and technical support personnel. The Department has also developed a DOE rule and associated Safety Guide that incorporate the basic requirements for performance-based training contained in DOE 5480.18 and the prescriptive requirements contained in DOE 5480.20.

The MITRE report indicates that the DOE Orders do not contain a requirement for a simulator for the production reactors. It should be noted by the DNFSB that the NRC rules also do not require a simulator for commercial power reactors. DOE 5480.20 continues to require a facility specific evaluation for the need for a full-scope simulator. Based on such evaluations conducted in 1981, the DOE production reactors have installed full-scope simulators. In addition, the DOE rule currently incorporates an explicit requirement for a full-scope simulator for production reactors and continues the requirement for a facility-specific evaluation for other Category A test and research reactors.

The MITRE report also indicates that the Department's requirements for control room staffing are different from those for civilian power reactors. DOE's control room staffing requirements for Category A and B reactors are the same as those for commercial power reactors and research reactors, respectively. In addition, the MITRE report states that verification rather than certification of operators is required at nonreactor nuclear facilities. It should be noted that verification was in fact defined in a manner identical to certification in previous Orders. The current DOE Orders have been revised to use the same terminology (i.e., certification). Finally, the MITRE report notes that DOE contractors, rather than DOE personnel certify operators. DOE Order 5480.20 provides for a much more direct role of oversight by DOE including coevaluation of operators in a manner similar to NRC's current requalification program practices. Through the Department's training accreditation program, individual training programs for maintenance personnel, radiation protection technicians, and technical staff, as well as operator programs will be individually accredited. This program will provide the necessary assurance of the content and quality of training

programs and the competency of personnel completing the programs.

Fire Protection

15. DOE and NRC differ in their fundamental approaches to fire protection. The DOE emphasis is on minimizing risk to the public and workers, on preventing the disruption of vital DOE programs, and on keeping the monetary cost of a fire to manageable proportions. NRC's fire protection program requirements are directed at protecting safety systems and preventing radioactive releases to the environment. Thus, DOE Orders do not explicitly address nuclear safety systems and safe shutdown.

Fire protection is the sum of all activities to provide for the control and/or extinguishment of all aspects of fire. Fire prevention, referring primarily to measures directed towards avoiding the inception of fire, is a subset of fire protection. Fire protection engineering establishes the appropriate mix of construction, protection, and occupancy requirements which sets adequate suppression mechanisms in place, mitigates the consequences of fire and minimizes the need for detection.

There are basic differences between the approach to fire protection taken by DOE and NRC because there is a fundamental difference between the role of DOE and NRC. DOE is the Owner/Operator/Regulator of facilities and NRC is only the Regulator of facilities. The NRC licensee employs an insurance company, usually the nuclear fire insurance arm of either the Factory Mutuals (FM) or the Improved Risk Insurers (IRI), the major Highly Protected Risk (HPR) insurers in the world, to protect its investors' interests by securing the best fire protection engineering, loss prevention advice and insurance coverage available against catastrophic fire loss. DOE must also do this as owner of the facilities.

NRC is primarily concerned with the safe operation/shutdown of reactors. DOE also shares this concern. However, in addition to this responsibility, DOE also has broader regulatory concerns that parallel those of other Government regulatory agencies, e.g., EPA, DOL/OSHA, etc. Consequently, DOE fire protection includes and emphasizes other codes/standards such as the Life Safety Code. Thus, the Department's actions for assuring full scope responsibility for fire protection is supportive of MITRE's implied recommendation that DOE not follow the limitations of NRC requirements that focus only on safety-related functions (MITRE conclusion #7 above).

16. DOE Orders are written in a general manner, reflecting the fact that they apply to all types of facilities. Orders applying to existing facilities make limited reference to consensus standards. NRC requirements include detailed consideration of such aspects as electrical cable tray design, remote safety-related shutdown control panels, and fire barriers. Also, fire prevention plays a prominent role in NRC's defense-in-depth principle for safety.

The DOE fire protection program is based upon the Highly Protected Risk (HPR) concept. The essential elements of the program are given in section 10, "Essential Elements of an Improved Risk (the terms HPR and Improved Risk are synonymous) Facility," in DOE Order 5480.7. DOE Order 5480.7 was intended to provide direction to a professional fire protection engineer with HPR experience. This provides too much latitude for use as a regulatory document since stringent requirements are implicit rather than explicit.

The DOE fire protection program requires qualified professional fire protection engineers to review, for fire protection content and adequacy, all plans prior to construction to require regular self-inspections, periodic audits by independent HPR authorities, physically adequate enclosures, separations and protection of special hazard operations among other concerns.

DOE Order 5480.7 under the section "Compliance With Improved Risk Objectives" states: "To ensure—no threats to the public—will result from fire." DOE fire protection personnel have interpreted this to mean that a fire will not be the cause of harm to the public either through the flames of a fire or through release of toxic or hazardous materials through a breach of the structural integrity of the process under fire attack. The other three objectives are equally broad. More specific language will be incorporated in future revisions to this Order.

Maintenance

17. The existing maintenance requirements for operating DOE facilities are extremely limited in their scope and structure, and weak in their level of detail. In fact, they are virtually nonexistent for production reactor facilities. Explicit evaluations of maintainability are based on optimizing life-cycle cost analyses. On the NRC side, the existing maintenance requirements are scattered through some 30 Regulatory Guides and chapters of the Inspection Manual. Appropriate sections of consensus standards on quality assurance that deal with

maintenance also apply. Maintenance requirements are a concern for the non-safety-related or "balance-of-plant" equipment, which is not as strictly regulated as the safety-related portion of the licensed facilities. Thus, NRC's maintenance requirements are not well integrated into its regulations.

DOE issued DOE Order 4330.4A, "Maintenance Management Program," for use by all Department elements in April 1991. The Order consolidates DOE's maintenance program requirements and requires the contractor program to be documented in Maintenance Implementation Plans which will be approved by the Department. The Order covers maintenance requirements, modeled after the Institute of Nuclear Power Operations guidelines for all equipment and systems in both nuclear and nonnuclear facilities.

The DOE's maintenance requirements are also provided in the first set of proposed DOE Rules that is scheduled to be published in the *Federal Register* in July 1991. The rule for maintenance contains the same basic requirements that are provided in DOE Order 4330.4A and is supplemented by a Safety Guide to provide additional information to DOE contractors relating to implementation. DOE's inspection and enforcement will be based on the new Order and proposed rule.

18. As a result of the need for improved maintenance, both DOE and NRC have drafted and proposed additional requirements. DOE's planned adoption of Institute of Nuclear Power Operation's (INPO's) maintenance requirements reflects DOE's current philosophy of incorporating accepted industry programs into its key maintenance activities. Finalization of DOE's proposed maintenance program would result in a more comprehensive and detailed approach to maintenance. NRC has published its policy on maintenance and intends to proceed with the issuance of a proposed rule. It already has implemented an inspection and enforcement measure that will increase civil penalties for licensee violations that involve a maintenance-related failure.

See response to MITRE conclusion #17 above.

Radiation Protection

19. There are several differences between DOE and NRC with respect to their radiation protection programs, related, for example, to the implementation of the as-low-as-is-reasonably-achievable (ALARA) process, and requirements for personnel

monitoring and training. However, the radiation standards adopted by the two organizations are generally consistent.

Occupational radiation protection standards and limits within the DOE have typically been proactive and conservative. As an example, DOE modified their existing occupational radiation protection standards in 1988 to reflect the 1987 Environmental Protection Agency (EPA) Radiation Protection Guidance to Federal Agencies for Occupational Exposure. DOE was the first Federal agency to adopt these recommendations, which basically incorporated the recommendations contained in the International Commission on Radiological Protection (ICRP) Report 26. Current NRC regulations do not reflect the 1987 EPA guidance, and consequently generally allow higher radiation exposures to the occupational worker. DOE has been advised that NRC is planning to issue revised regulations in 1991, to be effective in 1993, that will bring them into consistency with current DOE and EPA requirements.

Current DOE occupational radiation protection regulations require monitoring of worker external and internal exposures at thresholds more conservative than current and proposed NRC regulations. The DOE Laboratory Accreditation Program (LAP) for accrediting external dosimetry programs contains more stringent requirements than the corresponding LAP required by NRC. The DOE Order describing radiation protection requirements for occupational workers (DOE Order 5480.11) provides more detailed requirements in the areas of training, instrumentation, area posting and access control, and ALARA design requirements than the corresponding NRC regulation (10 CFR part 20).

In 1990, DOE formed the Office of Health, with authority to develop policy and guidance in the occupational radiation protection and industrial hygiene areas. The Office of Health is continually reviewing the adequacy of current DOE radiation protection policy and is currently developing additional guidance in a number of radiation protection program areas to ensure a high level of performance within the DOE complex.

20. NRC has provided more structured and detailed guidelines than DOE on meeting its regulatory requirements. Guidelines on effluent monitoring and estimation of potential radiation doses are examples.

The requirements for effluent monitoring and radiation dose estimation are more specific in DOE

Orders 5400.1 and 5400.5 than those provided by NRC in 10 CFR part 20. The DOE Orders not only require the collection of data but also the submittal of the data to a central database. Since DOE's guidance for monitoring was in draft at the time of publication of the MITRE report, it is easy to understand the basis for the conclusion that NRC's guidance was more detailed. However, since that time the DOE guidance has been published and is now being distributed under the title "DOE Environmental Regulatory Guide for Radiological Effluent Monitoring and Environmental Surveillance." It should also be noted that the reporting requirements in the DOE Orders are more specific and comprehensive than the environmentally related requirements in the NRC Rules. Based on this current guidance, the Department does not believe that the NRC guidance in this area is any more comprehensive or detailed.

With regard to dose estimation, DOE guidance to the field for conducting dose estimates using the ICRP-26/30 recommended methodology has existed since 1985. These requirements were formalized for environment and public protection in DOE Order 5400.5 in February 1990. NRC is just now issuing similar requirements in a revision to 10 CFR part 20. NRC has prepared some Regulatory Guides for estimating dose; however, this material is necessary because many of its licensees do not have specific models, staff, or programs for conducting such estimates. All DOE facilities have programs and staff assigned to these functions and issue annual reports containing the results of these efforts. DOE continues to conduct audits/internal reviews and provide additional guidance to ensure the quality, accuracy, and consistency of these procedures. The Department believes this oversight to be equal to or exceeding that of NRC, and that, on average, DOE has more monitoring data on its contractor sites and releases than NRC has on its licensees.

In summary, considering the DOE Orders and guidance that have been issued since MITRE performed their review, the Department believes that the concerns raised in the report have been resolved.

Radioactive Waste Management

21. The DOE Order on this subject is detailed and often more specific than the NRC regulations on certain topics. The Order references pertinent requirements of NRC and other agencies.

No response needed.

22. DOE does not provide a time restriction on liquid high-level waste before it is converted to solid form. The NRC regulations provide a time limit of five years. However, DOE provides requirements for the management of liquid high-level waste, while NRC does not.

It is true that DOE does not provide a time requirement for converting liquid high-level waste to solid form. However, the Department does require provisions for the control of chemistry of liquid high-level waste to minimize corrosion of the storage vessel and requirements for monitoring, surveillance, and leak detection (DOE Order 5820.2A, Radioactive Waste Management, 9-26-88, Chapter I). NRC does provide some requirements for the management of high-level waste in Title 10 CFR part 60, 2-25-81, Disposal of High-Level Wastes in Geologic Repositories and in Title 10 CFR part 72, 8-19-88, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.

23. DOE's disposal of high-level waste is subject to NRC regulations.

No response needed.

24. DOE requirements for the disposal of low-level waste are similar to NRC's regulations. However, the NRC regulations are more specific in terms of waste classification.

Both NRC and DOE requirements for low-level waste disposed provide for similar protection from the disposal waste. The performance objectives for the two organizations are similar. For NRC regulated disposal facilities, the annual dose must not exceed an equivalent of 25 mrem to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ for any member of the public. DOE limits the annual effective dose equivalent to 25 mrem to any member of the public.

Both organizations require the preparation of an all pathways analysis (performance assessment) to provide reasonable assurance that the above performance objectives are met.

NRC has developed a waste classification system which imposes additional requirements, such as waste form stability and depth of disposal, which are dependent on the level of radioactivity in the waste. The waste classification system was developed based on the types of wastes regulated by NRC and for an intruder scenario only. Additional restrictions may be put on certain waste types or classes if the performance assessment indicates that they are necessary. DOE decided against developing or adopting a waste classification system. Instead, the

criteria for waste form, depth of disposal, types of waste allowed, etc., are determined on a site-specific basis and must be justified by the performance assessment.

Emergency Planning and Preparedness

25. DOE Orders call for developing, with the Federal Emergency Management Agency (FEMA), scenarios for use by DOE facility operators and state and local governments in exercising radiological emergency plans. NRC requires formal concurrence with FEMA that emergency plans are adequate and capable of being implemented. NRC also requires an independent periodic review of the emergency plans; a similar requirement is not provided in the DOE Orders.

The DOE requirement cited was excerpted from a July 1990 draft DOE Order which has since been changed to have the Heads of Field Elements assist state, tribal, and local governments in the development of emergency plans when the Emergency Planning Zone extends beyond DOE site boundaries. This assistance is to be provided in coordination with appropriate Federal agencies, such as FEMA. The need to ensure coordinated planning and response activities is recognized explicitly in the current drafts of DOE Order 5500.1B, 5500.2B, 5500.3A, and 5500.10, which all contain provisions for coordination of emergency plans with Federal, state, tribal, and local emergency response organizations. These Orders also contain provisions for requesting and accommodating participation by other organizations in emergency exercises. The current drafts of the DOE Orders, cited above, also require annual updates of emergency plans, with corresponding coordination and approval, and the preparation of 5-year emergency readiness assurance plans, which describe activities, accomplishments, plans, schedules, and budgets.

DOE emergency plans are comprehensive relative to radiological and non-radiological hazards expected at each facility. Emergency plans within the Department are subject to approval by each level of line management, culminating in approval by the Program Secretarial Officer. In addition, independent oversight of emergency plans is provided by the Office of Nuclear Safety and the Office of the Assistant Secretary for Environment, Safety, and Health. These two offices were established by the Secretary to independently overview the nuclear and nonnuclear aspects of all DOE operations. They report directly to the

Secretary and have no programmatic responsibility.

With the implementation of the requirements contained in the new and revised DOE 5500 series Orders identified above, and the continued involvement of the independent oversight organizations within the Department in the review of emergency plans and other emergency management activities, the Department has no need for entering into a special arrangement with FEMA to provide concurrence on emergency plans.

26. The DOE Orders do not contain an integrated, full-scale exercise requirement describing the scope and frequency of emergency drills and exercises at DOE facilities. The NRC requirements are as follows: One full-participation exercise prior to full-power license issuance; and annual onsite exercises, in which state and local authorities must fully participate biennially, and local authorities from all states within the potentially affected area must participate every seven years.

Draft DOE Order 5500.3A, "Planning and Preparedness for Operational Emergencies," which is currently being finalized, contains specific requirements for a coordinated drill and exercise program as an integral part of the Department's overall emergency management program. One of the requirements in this Order calls for each DOE facility to conduct a full-participation exercise annually. Federal, state, tribal, and local regulatory and/or emergency response organizations must be offered the opportunity to participate in these exercises, and participation must be accommodated when requested.

Safety Issue Identification, Notification, and Resolution

27. DOE requirements in this area are generally comparable to NRC. No response needed.

28. The DOE program for identifying, prioritizing, and resolving generic safety issues does not appear to be as structured and formal as that of NRC.

The response to this conclusion will be in two parts, the first dealing with the Department's Safety Concern Management System and the second dealing with occurrence reporting. The diversity of the Department's facilities normally mitigates against the development of a large number of generic safety issues. In regard to the Department's Safety Concern Management System, the Department prepared a draft DOE Order in CY 1989 which has undergone extensive review. In addition the Department has prepared a Notice for Proposed Rulemaking on "whistle-blower" protection which was

published in the **Federal Register** on March 13, 1990. The Department expects to issue a DOE Order on the Safety Concern Management System in CY 1991. This Order details the Department's process in identifying, prioritizing, and resolving safety issues which are discovered anywhere in the DOE complex. As noted in the MITRE report, this program is extensive. Improvements in more recent drafts of the Order provide a more structured and formal approach to how the Department processes and resolves these safety concerns.

In terms of occurrence reporting, the Department issued DOE Order 5000.3A, "Occurrence Reporting and Processing of Operations Information," on May 30, 1990. This Order documents the Department's requirements for occurrence categorization, notification, reporting, and follow-up (root cause identification and corrective actions). The process requires line program management involvement in the follow-up of the occurrences in terms of root cause identification and in assuring that corrective actions are appropriately identified, resources applied, and actions completed. Monthly status reports of outstanding corrective actions are required to help assure tracking of all actions to completion.

29. DOE does not explicitly define an unusual occurrence of major significance that requires "prompt reporting" to the appropriate Program Secretarial Officer.

DOE Order 5000.3A and the proposed Rule and Safety Guide on occurrence reporting now indicate that Program Secretarial Officers or their designees (program managers) must be notified of all unusual occurrences verbally within 2 hours of categorization of an event/condition and formally notified, in writing, within 24 hours.

30. DOE does not provide a mechanism, such as NRC's process for "Differing Professional Opinion," for the consideration of dissenting views on decisions or responses to safety issues.

In regard to safety issues identified through the occurrence reporting system, both the DOE Order and proposed Rule/Safety Guide on occurrence reporting explicitly provide for input by Department personnel which may differ from the action/direction that the Department/contractor proposes for a particular event/condition.

The Department is developing a Safety Concern Management System program that will consider the need for

a separate "Differing Professional Opinion" process.

[FR Doc. 91-11791 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3956-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 29, 1991 Through May 3, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-COE-K34008-CA Rating E02

North Delta Multipurposes Water Program, Sacramento, Cosumnes and Mokelumne Rivers, section 10 and 404 Permit, Sacramento County, CA.

Summary: EPA believes the project has potential adverse impacts to the endangered fall-run Chinook salmon and existing wetlands habitat and may be inconsistent with ongoing planning efforts to provide for increased protection of water quality and beneficial uses in the San Francisco Bay/Delta. It is essential that the environmental impacts of this project be assessed cumulatively with other major existing and planned projects affecting the Bay/Delta, and that this project not move forward until the State of California has completed its Bay/Delta water supply hearing process.

ERP No. D-FHW-J40123-MT Rating LO

I-15/North Helena Valley Interchange Improvements, I-15 to Montana Avenue, Construction, Funding, Lewis and Clark County, MT.

Summary: EPA has no objections to this project.

ERP No. D-IBR-K28015-CA Rating EC2

Salinas Valley Seawater Intrusion Program, Long-Term Water Supply, Funding, COE Section 10 and 404 Permits, Salinas River, Castroville, Marina and Fort Ord Areas, Salinas Valley, Monterey County, CA.

Summary: EPA believes the proposed project has potential adverse impacts to existing wetlands and riparian areas in the vicinity of the proposed diversion structure, adverse impacts to Salinas River fisheries, and effects on fish and wildlife resources at two reservoirs. Proposed mitigation may not adequately offset losses; other alternatives to reduce seawater intrusion should be more closely examined. EPA supports the wastewater reclamation component of the proposed project.

Final EISs

ERP No. F-BLM-K36197-NV

Clark County Regional Flood Control Master Plan, Facilities Construction and Operation, Right-of-Way Approval and Section 404 Permit, Clark County, NV.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-CDB-C82029-NY

Marina Redevelopment Project Area, Development and Construction, Urban Development Action Grant (UDAG) and COE Nationwide Permit, Village of Port Chester, Westchester County, NY.

Summary: EPA's concerns were adequately addressed in this document.

ERP No. F-FHW-K40166-HI

Honoapiilani Highway/FAP route 30 Improvements, Puamana to Honokowai, Funding, Maui County, HI.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: May 14, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-11799 Filed 5-16-91; 8:45 am]

BILLING CODE 6560-50-M

Workshops on Ecological Risk Assessment Case Studies

[FRL-3956-7]

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: This notice announces four workshops sponsored by the Environmental Protection Agency's (EPA) Risk Assessment Forum to obtain scientific peer-review for approximately 20 ecological risk assessment case studies.

DATES: The dates and locations for the workshops are listed below. Members of the public may attend as observers.

• *Part 1* The workshop will be held at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD. It

will begin on Wednesday, May 29, 1991 at 8:30 a.m. and end on Thursday, May 30, at 5 p.m.

• *Part 2* The workshop will be held at the Southland Center Hotel, 400 N. Olive Street, Dallas, TX. It will begin on Tuesday, June 4, 1991 at 8:30 a.m. and end on Wednesday, June 5 at 5:45 p.m.

• *Part 3* The workshop will be held at the U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA. It will begin on Tuesday, June 11, 1991 at 11 a.m. and end on Wednesday, June 12 at 5:30 p.m.

• *Part 4* The workshop will be held at the Cherry Hill Inn, Route 38 and Haddonfield Road, Cherry Hill, NJ. It will begin on Tuesday, June 18, 1991 at 8:30 a.m. and end on Thursday, June 20 at 12:45 p.m.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshops. To attend a workshop as an observer, call Eastern Research Group at (617) 641-5373 or contact Susan Brager, Eastern Research Group, 6 Whittemore Street, Arlington, Massachusetts, 02174, telephone (617) 641-5347. Space is limited.

FOR FURTHER INFORMATION CONTACT:

Ms. Shirley Thomas, U.S. Environmental Protection Agency, (RD-689), 401 M Street, SW., Washington, DC, 20460, Telephone (202) 475-6743 (FTS: 475-6743).

SUPPLEMENTARY INFORMATION: EPA work groups have prepared approximately 20 case studies that represent a wide range of ecological risk (ecorisk) assessments. To obtain scientific peer review for these case studies, a series of four workshops will be held. Each of the workshops will review between four and seven case studies from both a scientific and risk assessment point of view.

After the workshops, the individual case studies will be compiled into an overall report that will include a description of each case study, a discussion section that will review ecological risk assessment issues and research needs identified in the case studies, and a "tools" section that will contain a cross-referenced listing of ecorisk methods, models, and assessment schemes used in the case studies. The case studies report will report interim guidance in performing ecorisk assessments until additional specific ecorisk guidelines can be developed. This report will be made available to the public in a future issue of the **Federal Register**.

Dated: April 15, 1991.

Erich Bretthauer,
Assistant Administrator for Research and
Development.

[FR Doc. 91-11755 Filed 5-16-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59295A; FRL-3926-3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-91-11. The test marketing conditions are described below.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-91-11. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-91-11. A bill of lading

accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-91-11

Date of Receipt: March 12, 1991.

Notice of Receipt: March 26, 1991 (56 FR 12531).

Applicant: Confidential.

Chemical: (G) Polyester Polymer.

Use: Electrical insulating varnish.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc 91-11756 5-16-91; 8:45am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

WCCR Broadcasting Limited Partnership et al.; Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for two new FM stations:

Applicant	City and State	
	File No.	MM Docket No.
I		
A. WCCR Broadcasting Limited Partnership; Leland, NC.	BPH-890316MB	91-101
B. Hara Broadcasting, Inc.; Leland, NC.	BPH-890316MD	
C. Sharon M. Moran; Leland, NC.	BPH-890316MF	
D. Cape Broadcasting Corporation; Leland, NC.	BPH-880316ME	
E. Leland Broadcasting Group, Inc.; Leland, NC.	BPH-890313MP [Dismissed Previously]	

Issue heading and applicants

1. Financial, A
2. Environmental Impact, B, C
3. Comparative, All
4. Ultimate, All

II		
A. Pruitt, Inc.; Campbellsville, KY.	BPH-891011MK	91-96
B. Johnson Radio Company, Inc.; Campbellsville, KY.	BPH-891012MH	
C. David H. Greenlee; Campbellsville, KY.	BPH-891012MJ	
D. Michael T. Harding; Campbellsville, KY.	BPH-891012MM	
E. Patricia Rodgers; Campbellsville, KY.	BPH-891012NC	
F. The Eagle Shelby Group; Campbellsville, KY.	BPH-891012NG	

Issue Heading and Applicants

1. Cross-interest, D
2. Air Hazard, D
3. Comparative, A-F
4. Ultimate, A-F

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may

also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036. (Telephone (202) 452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 91-11699 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200513.

Title: Maryland Port Administration/
Ceres Corporation, Inc. Terminal
Agreement.

Parties:

Maryland Port Administration,
Cere Corporation, Inc.

Synopsis: The Agreement, filed May 9, 1991, provides for the lease of premises in area 503 at the Dundalk Marine Terminal at rental based on certain tonnage level discounts. The Agreement's term expires December 31, 1991.

Agreement No.: 224-200402-003.

Title: Maryland Port Administration/
Puerto Rico Maritime Shipping
Authority Terminal Agreement.

Parties:

Maryland Port Administration (MPA),
Puerto Rico Maritime Shipping
Authority (PRMSA).

Synopsis: The Agreement provides for a 30-day extension of the Agreement and Lease between MPA and PRMSA, effective May 9, 1991.

Agreement No.: 224-003158-007.

Title: The Port Authority of New York
and New Jersey/Ecuadorian Line
Terminal Agreement.

Parties:

The Port Authority of New York and
New Jersey (Authority),
Ecuadorian Line (EL).

Synopsis: The Agreement amends the parties' basic agreement to provide for: the addition of approximately three acres of open area as additional premises for the storage of containers, chassis, trailers, tractors and other equipment, subject to the Authority's 30-day expiration right; EL to pay rental for the additional premises at an annual rate of \$75,000.

Dated: May 14, 1991.

By Order of the Federal Maritime
Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11776 Filed 5-16-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-14]

Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences; Extension of Time for Replying to Comments

By notice served April 26, 1991, the Commission extended the time for filing comments to June 21, 1991. Accordingly, the time for filing replies to comments is also extended, to August 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11777 Filed 5-16-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing

must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 5, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire 100 percent of the voting shares of The Central Trust Company, Newark, Ohio; The Central Trust Company of Northern Ohio, N.A., Lorain, Ohio; The Central Trust Company of Northeastern Ohio, N.A., Canton, Ohio; and The Central Trust Company of Southeastern Ohio, N.A., Marietta, Ohio.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank Management Group, Ltd.*, Manchester, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First Winthrop Bancorporation, Inc., Winthrop, Iowa, and thereby indirectly acquire Peoples State Bank, Winthrop, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Arkansas Bancshares, Inc.*, Malvern, Arkansas; to acquire at least 98.83 percent of the voting shares of One National Bank of Hot Springs, Hot Springs, Arkansas.

2. *First Bentonville Bancshares, Inc.*, Bentonville, Arkansas; to become a bank holding company by acquiring at least 94.5 percent of the voting shares of First National Bank, Bentonville, Arkansas.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11731 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

Bluestem Financial Services, Inc.; Notice of Application to Engage de Novo in Permissible Nonbanking Activities

CORRECTION

This notice corrects a previous *Federal Register* notice (FR Doc. 91-

10726) published at page 21161 of the issue for Tuesday, May 7, 1991.

Under the Federal Reserve Bank of Chicago, the entry for Bluestem Financial Services, Inc. is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bluestem Financial Corp.*, Fairbury, Illinois, to engage *de novo* through its subsidiary, *Bluestem Financial Services, Inc.*, Fairbury, Illinois, in insurance agency activities pursuant to § 225.25(b)(8)(iii); tax planning activities pursuant to § 225.25(b)(21); and providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Fairbury, Illinois.

Comments on this application must be received by May 28, 1991.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR DOC. 91-11734 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

Fleet/Norstar Financial Group, Inc. and Fleet/Norstar Holding Company, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on the applications that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding these applications must be received no later than May 28, 1991.

A. Federal Reserve Bank of Boston (William Spring, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc. and Fleet/Norstar Holding Company, Inc.*, a bank holding company in formation, both of Providence, Rhode Island, to acquire New Bank of New England, National Association, Boston, Massachusetts; and New Connecticut Bank & Trust Company, National Association, Hartford, Connecticut. As part of these acquisitions, Fleet/Norstar Holding Company also intends to acquire the bank to result from the conversion of Fleet Bank of Connecticut, Hartford, Connecticut, to a national charter. In a related transaction, Fleet Norstar Financial Group, Inc. intends to acquire the operations of New Maine National Bank, Portland, Maine.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11732 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

C.N. Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1991.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105.

1. *C.N. Bancorp*, Taipei, Taiwan; to engage *de novo* through its subsidiary, *CNB Bancorp*, San Francisco, California, in participating in loans of banking subsidiaries or other banks pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11733 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0125]

Revisions of the Pectins Food Chemicals Codex, 3d Ed., Monograph; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to the Food Chemicals Codex, 3d Ed., monograph for pectins. The additions, changes, and corrections in this monograph have been prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex. This revised monograph will be published in the Third Supplement to the Food Chemicals Codex, 3d Ed.

DATES: Written comments by June 17, 1991. (The NAS/IOM Committee on Food Chemicals Codex advises that comments received after this date cannot be considered for the third supplement but will be considered for later supplements.)

ADDRESSES: Written comments to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Sanford W. Bigelow, Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20418, 202-334-2580;

or

Paul Kuznesof, Center for Food Safety and Applied Nutrition (HFF-415), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5680.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to the NAS/IOM to support preparation of the Food Chemicals Codex, a compilation of specifications for substances used as food ingredients. In the *Federal Register* of January 11, 1991 (56 FR 1198), FDA announced that the NAS/IOM Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the Third Supplement to the Food Chemicals Codex, 3d Ed. In the *Federal Register* of January 26, 1984 (49 FR 3271), FDA announced that the NAS/National Research Council Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the Second Supplement to the Food Chemicals Codex, 3d Ed., which has since been published. The public was invited to comment and make suggestions for consideration and inclusion in that publication.

FDA now gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting comments and information on proposed changes to the monograph for pectins. Information received in response to this notice will be used to determine whether the proposed changes to the current pectins monograph are necessary. Copies of the proposed revision of the Pectins monograph may be obtained from NAS (address above). Once comments are considered, the revised monograph will be published in the Third Supplement to the Food Chemicals Codex, 3d Ed.

FDA emphasizes, however, that it will not consider adopting new monographs and monograph revisions until the public has had ample opportunity to comment on the proposed new monographs and the proposed changes to existing monographs. The opportunity for public comment will be announced in a notice published in the *Federal Register*.

The NAS/IOM Committee on Food Chemicals Codex invites comments and

suggestions by all interested parties on the proposed revisions of the Pectins monograph.

Two copies of written comments regarding the monograph listed in this notice are to be submitted to NAS (address above). Each submission should state that it is in response to this *Federal Register* notice. NAS will forward a copy of each comment to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, to be placed under Docket No. 91N-0125 for public review.

Dated: May 10, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11736 Filed 5-16-91, 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89A-0005]

Response to a Request for an Advisory Opinion Concerning the Definition of "Manufactured" with Regard to Device Labeling Requirements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food Drug Administration (FDA) is announcing the availability of a response to a requests for an advisory opinion concerning the definition of "manufactured" with regard to device labeling requirements.

ADDRESSES: Submit written requests for single copies of the response concerning the definition of "manufactured" with regard to device labeling requirements to Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the response to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the response and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: On December 22, 1988, Richard J. Larkin submitted a request for an advisory opinion concerning when a firm is considered to be a medical device manufacturer under the Federal Food, Drug, and Cosmetic Act and title 21 of the Code of Federal Regulations (21 CFR parts 801 and 820).

The following questions were asked:

(1) When is a firm considered a "manufacturer" with regard to the labeling requirements included under 21 CFR 801.1(c)?

(2) Who is the manufacturer if "outside contract manufacturing firms" are used to produce the device, but they supply the devices in bulk form to the marketing company, who in turn, packages, labels, sterilizes, and quality control tests the final product? Must the marketing company display a qualifying phrase, such as: "Manufactured for," "Distributed by," or some other statement on the label of their device?

(3) Is a nonsterile device that is manufactured by an outside-contractor and packaged in bulk considered a "finished device," even though it will be further processed and marketed as a sterile device?

FDA's response states that § 801.1 requires that the label of a device contain the name and place of business of the manufacturer, packer or distributor. Section 801.1(c) requires that, where the person whose name appears on the label is not the manufacturer of the device, the name must be qualified by terms such as, "Manufactured for _____", "Distributed by _____", "or any other wording that expresses the facts."

The purpose of § 801.1 is to assure that a responsible person is identified in the event it is necessary to contact someone regarding the device.

It is the responsibility of the marketing party to ensure that the label statement expresses the facts and is not false or misleading. While more than one party may be a manufacturer of a device, if a party plays a minor role, its name alone on the label, as manufacturer, would be misleading. Instead, and solely to achieve the purpose of § 801.1, in the situation identified by Mr. Larkin, it would be appropriate to use such terms as "manufactured for _____" or "distributed by _____" or "manufactured by _____ in conjunction with _____". It would not be appropriate to represent or suggest that any one firm was the sole manufacturer.

With respect to the third question asked by Mr. Larkin "finished device" is defined in 21 CFR 820.3(j) as "a device, or any accessory to a device, which is suitable for use, whether or not packaged or labeled for commercial distribution." If the device described is suitable for a use, even if not as a sterile device, then it is a "finished device" as defined in 21 CFR 820.3(j).

The agency is now in the process of considering whether to revise § 10.85 Advisory Opinions (21 CFR 10.85). Although the decisionmaking process is not yet complete, the agency has decided to publish this opinion. However, this notice and the opinion are not being issued under the authority of 21 CFR 10.85, and the opinion, although called an advisory opinion, does not operate to bind the FDA or any other person in any way.

The agency advises that this advisory opinion represents its current position on this issue. A person may follow the opinion or may choose to follow an alternate course of action. If a person chooses an alternate course of action, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This opinion does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

Dated: May 10, 1991

Ronald G. Chesebore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11737 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meetings are announced:

Circulatory System Devices Panel of the Medical Advisory Committee

Date, time, and place. June 3 and 4, 1991, 8:30 a.m., rm. 503-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, June 3, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, June 4, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 4:30 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1018.

General function of the committee. The committee reviews and evaluates data on marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 24, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an implantable cardiac pacemaker, peripheral vascular prosthesis, and coronary interventional devices.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Biological Response Modifiers Advisory Committee

Date, time, and place. June 10, 1991, 8:30 a.m., Holiday Inn Crowne Plaza, Plazas II and III, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 5:30 p.m.; Anna J. Baldwin, Center for

Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 3, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the use of XomZyme CD5 Plus monoclonal antibody (Xoma Corp.) for the treatment of steroid-resistant graft-versus-host disease in bone marrow transplantation patients.

Closed committee deliberation. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Arthritis Advisory Committee

Date, time, and place. June 20, 1991, 9 a.m., Bethesda Ramada Inn, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 5 p.m.; Khairy W. Malek, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0335 or 443-3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 5, 1991, and submit a brief statement of the general

nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss guidelines for the clinical evaluation of analgesic drugs.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 24, 1991, 9 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m., to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1034.

General function of the committee. The committee reviews and evaluates data on marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make the formal presentations should notify the contact person before June 1, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for the quantitative measurement of prostate specific antigen in human serum for use as an adjunctive test in predicting prognosis and as an aid in the management of prostate cancer patients.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding the device listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee

discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion.

Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 231 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600

Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall

not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs and devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 14, 1991.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 91-11797 Filed 5-14-91; 2:18 p.m.]

BILLING CODE 4160-01-M

The Prescription Drug Marketing Act of 1987; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding six meetings on the Prescription Drug Market Act of 1987 (PDMA). The meetings are intended to inform regulated industry, State officials, health professionals, and other interested persons of PDMA's history and requirements, and the agency's enforcement policies relating to the act. This notice announces the first three meetings and their respective locations. The Agency will announce the other three meetings in a future issue of the Federal Register.

DATES: The meetings will be held between 9 a.m. and 5 p.m. on Monday, June 3, 1991; Tuesday, June 25, 1991; and Tuesday, July 9, 1991. Registration will be held between 8 a.m. and 9 a.m. of each meeting day.

ADDRESSES: On June 3, 1991, the meeting will be held at the Hyatt Regency Hotel, Two Albany St., New Brunswick, NJ; on June 25, 1991, at the Hyatt Regency Hotel, 350 North High St., Columbus, OH; and on July 9, 1991, at the Colony Park Hotel, 6060 North Central Expressway, Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Jeanne White, Office of Small Business,

Scientific, and Trade Affairs (HF-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6776.

SUPPLEMENTARY INFORMATION: FDA has organized six educational meetings, to be held across the country in six separate locations, to discuss the history and requirements of PDMA. This notice announces the first three meetings. The meeting were organized by FDA's Office of Small Business, Scientific, and Trade Affairs, Center for Drug Evaluation and Research's Office of Compliance, and the Office of Regulatory Affairs, encompassing the Regional offices.

PDMA (Pub. L. 100-293) was signed into law by the President on April 22, 1988. This act amended the Federal Food, Drug, and Cosmetic Act to: (1) Require State licensing of wholesale drug distributors under Federal guidelines that include minimum standards for storage, handling, and recordkeeping; (2) ban the reimportation of prescription drugs for human use produced in the United States, except when reimported by the manufacturer or for emergency use; (3) ban the sale, trade, or purchase of drug samples; (4) ban trafficking in or counterfeiting of drug coupons; (5) mandate storage, handling, and recordkeeping requirements for drug samples; (6) require practitioners to request drug samples in writing; (7) prohibit with certain exceptions the resale of prescription drugs purchased by hospitals or health care entities, or donated to or acquired at reduced cost by charitable institutions; and (8) set forth criminal and civil penalties for violations of these provisions.

In the Federal Register of September 14, 1990 (55 FR 38012), FDA issued guidelines for State licensing of wholesale prescription drug distributors as a final rule. The guidelines prescribe minimum standards, terms, and conditions for the storage and handling of prescription drugs for human use and for the establishment and maintenance of records of their distribution. These guidelines were effective September 14, 1990.

The topics for discussion at the meetings are the history of PDMA and its requirements, and the agency's enforcement policies relating to the act. There will be two question and answer sessions at each meeting, one in the morning and one in the afternoon.

Dated: May 13, 1991.

Ronald G. Chesebore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11798 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, May 10, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Interview of Mothers in a Case-Control Study of Nasopharyngeal Carcinoma (NPC)—New—As part of a case-control study of NPC in Taiwan, mothers of NPC cases and community controls will be asked to respond to a questionnaire which assesses information on dietary exposures of subjects at young ages. This information will be used to relate early dietary patterns to risk of NPC. *Respondents:* Individuals or households; *Number of Respondents:* 97; *Number of Responses Per Respondent:* 1; *Average Burden per Response:* 0.67 hour; *Estimated Annual Burden:* 65 hours.

2. Tea Chop List and Appellant's Application for Review of Examiner's Return—0910-0259—Importers of tea or merchandise described as tea are required by the Board of Tea Examiners to submit samples for examination to determine compliance with prescribed standards of purity, quality, and fitness for consumption, before being allowed entry into the U.S. Tea Samples which have been rejected are reviewed upon request by appellant. *Respondent:* Businesses or other for-profit; *Respondents:* 150; *Number of Responses per Respondent:* 30; *Average Burden per Response:* .025 hours; *Estimated Annual Burden:* 1,125.

3. Oral Health Outcomes in San Antonio, Texas—Oral health surveys will be conducted in San Antonio, Texas. Respondents will be consumers, dentists, students, and school officials. Data will be collected on personal oral health services, lifestyle behaviors, community-based activities and environmental agents as they contribute to resultant oral health. *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 18,439; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* .185 hours; *Estimated Annual Burden:* 3,420.

4. Importation and Shipment of Etiologic Agents—0920-0199—This data collection is the application for a permit to import or transfer agents or vectors of human diseases. The importer provides information on methods of transportation and proposed uses of materials imported. In the interstate shipment of these vectors, carriers must report the discovery of damaged packages and the sender must report any lost shipments. *Respondents:* State or local governments, businesses or other for-profit; *Number of Respondents:* 563; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* .304 hours; *Estimated Annual Burden:* 171 hours.

5. Transmittal of Periodic Reports and Promotional Material for New Animal Drugs—0910-0019—To facilitate a determination as to whether there may be grounds for suspending or withdrawing approval of the application or whether any applicable regulation should be amended or repealed. The respondents are the sponsors of approved New Animal Drug Applications whose numbers have increased over the years. *Respondents:* Businesses or other for-profit.

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting: 21 CFR 510.302a.....	1,500	.5	2.3
Recordkeeping: 21 CFR 510.300a and 21 CFR 510.301a.....	1,500	10.35	1

Estimated Annual Burden . . . 17,025 hours.

6. Foreign Quarantine (42 CFR part 71)—0920-0134—Foreign quarantine regulations implement the provisions of the PHS Act in preventing the induction, transmission, or spread of communicable diseases from foreign countries into the United States. Inspections and control measures are undertaken with respect to conveyances, persons, and shipments of animals and etiologic agents. *Respondents:* Individuals or households, businesses or other for-profit.

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting: Vehicles— 71.21, 71.33(c) 71.35.....	233	.02	9.6
Dogs & Cats— 71.51(b)(3) & 71.51(d).....	2,655	.25	1
Turtles— 71.52(d).....	10	.50	1
Nonhuman primates— 71.53(d).....	40	.167	1
Recordkeeping: Nonhuman primates.....	50	.25	

¹ Total burden hours.

Estimated Annual Burden . . . 744 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

James M. Friedman,

Director, Office of Health Planning and Evaluation, OASH.

[FR Doc. 91-11639 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-17-M

The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authority vested in the Secretary of Health and Human Services under Public Law 100-446, "The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989," as amended hereafter, to accept ownership of the buildings offered at no cost by the Gila River Indian Tribe for use solely as the Phoenix Area Regional Youth Treatment Center for Alcohol and Substance Abuse. This delegation excludes the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation became effective upon the date of signature. In addition, I

hereby affirm and ratify any actions taken by the Assistant Secretary for Health or subordinates which, in effect, involved the exercise of the delegated authority prior to the effective date of the delegation.

Dated: May 9, 1991.

Louis W. Sullivan,
Secretary.

[FR Doc. 91-11746 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-20-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on May 3, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Application For Benefits Under A U.S. International Social Security Agreement—0960-044800—The information collected on the form SSA-2490 is used by the Social Security Administration to determine a claimant's eligibility for retirement, survivors, or disability benefits from the United States (U.S.) or from a country which has entered into a Social Security agreement with the U.S. The affected public consists of claimants who have filed for these benefits.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 3,333 hours.

2. Direct Deposit Questionnaire—0960-0000—The information collected on the form SSA-1975 is used by the Social Security Administration to determine what additional measures should be taken to advise Supplemental Security Income (SSI) recipients of the availability and advantages of the direct deposit of payments into a recipient's private banking account. Without this collection of information SSA would not be able to determine why a large number of recipients have failed to utilize the features of direct deposit. The affected public consists of recipients already receiving benefits.

Number of Respondents: 1,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 375.

3. Application For Search of Census Records For Proof of Age—0960-0097—The information collected on the form SSA-1535 is used by the Social Security Administration to establish sufficient identifying information to allow an accurate search of census records to establish proof of age for an individual applying for benefits under the Social Security Act. Without this information individuals applying for benefits would not be able to establish their age which is a factor in determining eligibility. The affected public consists of individuals who need to obtain a census record in order to establish their age.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 3,600 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC. 20503.

Dated: May 13, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-11758 Filed 5-16-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-26]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 17, 1991.

ADDRESS: For further information,

contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a notice in the *Federal Register* identifying the properties determined as suitable.

The properties identified as suitable in this notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum,

subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this notice. For complete details concerning the processing of applications, the reader is encouraged to refer to HUD's *Federal Register* notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

This notice also contains a list of properties determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (202) 325-0474. U.S. Air Force: Bob Menke, USAF, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-4191. Veterans Administration: Linda Tribby, Management Analyst, Dept. of Veterans Affairs, room 717, 810 Vermont Ave. NW., Washington, DC 20420; (202) 233-5026. (These are not toll-free numbers.)

Dated: May 9, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable/Available Properties

California

Suitable Buildings (by Agency)

VA

Bldg. 116.

VA Medical Center.

Wilshire and Sawtelle Blvds.

Los Angeles, CA Co: Los Angeles 90073-.

Federal Register Notice Date: 05/17/91.

Property Number: 779110009.

Status: Underutilized.

Base Closure: No.

Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port. of bldg. used intermittently., needs rehab, poss. asbestos on pipes/floor tiles, site access lim.

Bldg. 263.

VA Medical Center.

Wilshire and Sawtelle Blvds.

Los Angeles, CA Co: Los Angeles 90073-.

Federal Register Notice Date: 05/17/91.

Property Number: 779110010.

Status: Underutilized.

Base Closure: No.

Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab. poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Navy

Bldg. 102.

Naval Facilities Point Sur.

CVB Detachment.

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 05/17/91.

Property Number: 779010260.

Status: Unutilized.

Base Closure: No.

Comment: 580 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103.

Naval Facilities Point Sur.

CVB Detachment.

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 05/17/91.

Property Number: 779010261.

Status: Unutilized.

Base Closure: No.

Comment: 3675 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—dinning hall.

Bldg. 109.

Naval Facilities Point Sur.

CVB Detachment.

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 05/17/91.

Property Number: 779010262.

Status: Unutilized.

Base Closure: No.

Comment: 1045 sq. ft., 2 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110.

Naval Facilities Point Sur.

CVB Detachment.

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 05/17/91.

Property Number: 779010263.

Status: Unutilized.

Base Closure: No.

Comment: 4439 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113.

Naval Facilities Point Sur.

CVB Detachment.

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 05/17/91.

Property Number: 779010264.

Status: Unutilized.

Base Closure: No.

Comment: 100 sq. ft., 1 story permanent bldg.; secure facilities with alternate access; most recent use—storage.

Bldg. 138.

Naval Facilities Point Sur.

CVB Detachment.

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 05/17/91.

Property Number: 779010265.

Status: Unutilized.

Base Closure: No.

Comment: 110 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144.

Naval Facilities Point Sur.

CVB Detachment.

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 5/17/91.

Property Number: 779010266.

Status: Unutilized.

Base Closure: No.

Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—bowling alley.

Bldg. 145.

Naval Facilities Point Sur.

CVB Detachment

Monterey, CA Co: Monterey 93940-.

Federal Register Notice Date: 5/17/91.

Property Number: 779010267.

Status: Unutilized.

Base Closure: No.

Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Suitable Land (by Agency)

Naval Ocean Systems Center.

271 Catalina Blvd.

San Diego, CA Co: San Diego 92106-.

Federal Register Notice Date: 5/17/91.

Property Number: 779010094.

Status: Excess.

Base Closure: No.

Comment: 16 acres, possible antenna radiation, secured facility with alternative access.

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base.

Grid R-2 to R-3 to V-4 to V-1.

Kings Bay, GA Co: Camden 31547-.

Federal Register Notice Date: 5/17/91.

Property Number: 779010229.

Status: Underutilized.

Base Closure: No.

Comment: 111.57 acres; areas may be environmentally protected; secured area wth alternate access.

Illinois

Suitable Land (by Agency)

Navy

Libertyville Training Site.

Libertyville, IL Co: Luke 60048-.

Federal Register Notice Date: 5/17/91.

Property Number: 779010073.

Status: Excess.

Base Closure: No.

Comment: 114 acres; possible radiation hazard; existing FAA use license.

Maryland

Suitable Land (by Agency)

Navy

White Oak Lab.

Navy Surface Warfare Center.

10901 New Hampshire Avenue.

Silver Spring, MD Co: Prince Georges 20903-.

Federal Register Notice Date: 5/17/91.

Property Number: 779010066.

Status: Excess.

Base Closure: No.

Comment: 16.5 acres; most recent use—buffer; secure area—access can be provided by relocation of fences.

Suitable Land (by Agency)

Bldgs. 738-797.

Naval Air Test Center.

Patuxent River, MD Co: St. Mary's 20607-.

Federal Register Notice Date: 5/17/91.

Property Numbers: 779010080-779010090,

779010092, 779010093, 779010095, 779010096,

779010098, 779010100, 779010102-779010106,

779010108, 779010113, 779010115-779010116,

779010118-779010119, 779010121-779010122,

779010124-779010125, 779010127,

779010129-779010155.

Status: Unutilized.

Base Closure: No.

Comment: One story residential buildings; utilities disconnected; needs rehab; requires alternate access off state highway, friable asbestos present.

Maine

Suitable Land (by Agency)

Navy

Naval Air Station.

Transmitter Site.

Old Bath Road.

Brunswick, ME Co: Cumberland 04053-.

Federal Register Notice Date: 05/17/91.

Property Number: 779010111.

Status: Underutilized.

Base Closure: No.

Comment: 66.13 acres, most recent use—transmitter station.

Suitable Buildings (by Agency)

Naval Air Station.

Transmitter Site.
Old Bath Road.
Brunswick, ME Co: Cumberland 04053-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010110.
Status: Underutilized.
Base Closure: No.
Comment: 7,270 sq. ft.; 1 story bldg; most recent use—storage, structural deficiencies.

New Mexico

Suitable Buildings (by Agency)

Navy

Bldg. 1 and 4.
U.S. Navy Reserve Center.
512 N 12th Street.
Carlsbad, NM Co: Eddy 88220-3046.
Federal Register Notice Date: 05/17/91.
Property Number: 779040001.
Status: Excess.
Base Closure: No.
Comment: 2460 sq. ft.; one story; frame/concrete block bldg; most recent use—office; presence of asbestos; and 152 sq. ft. metal storage shed on 1.03 acres.

Texas

Suitable Land (by Agency)

Navy

Peary Point #2.
Naval Air Station.
Corpus Christi, TX Co: Nueces 78419-5000.
Federal Register Notice Date: 05/17/91.
Property Number: 779030001.
Status: Excess.
Base Closure: No.
Comment: 43.48 acres, 60% of land under lease until 8/93. GSA NO. 7-N-TX-402-V.

Virginia

Suitable Buildings (by Agency)

Navy

Naval Medical Clinic.
6500 Hampton Blvd.
Norfolk, VA Co: Norfolk 23508-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010109.
Status: Unutilized.
Base Closure: No.
Comment: 3665 sq. ft., 1 story, possible asbestos, most recent use—dry.

SUITABLE/UNAVAILABLE PROPERTIES

California

Suitable Buildings (by Agency)

Navy

Bldg. 100.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010259.
Status: Unutilized.
Base Closure: No.
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office space.

Florida

Suitable Land (by Agency)

Navy

Naval Public Works Center.
Naval Air Station.
Pensacola, FL Co: Escambia 32508-.
Location: Southeast corner of Corey station—next to family housing.
Federal Register Notice Date: 05/17/91.
Property Number: 779010157.
Status: Unutilized.
Base Closure: No.
Comment: 22 acres.

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base.
Grid AA-1 to AA-4 to EE-7 to F-2.
Kings Bay, GA Co: Camden 31547-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010255.
Status: Underutilized.
Base Closure: No.
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

New York

Suitable Buildings (by Agency)

Navy

Naval Reserve Center.
112 Hanse Avenue.
Freeport, NY Co: Nassau 11550-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010041.
Status: Excess.
Base Closure: No.
Comment: 40000 sq. ft.; 1 floor; most recent use—offices; needs rehab.

Ohio

Suitable Buildings (by Agency)

Navy

Naval & Marine Corps Res. Ctr.
170 Ashland Road.
Mansfield, OH Co: Richland 44902-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010075.
Status: Excess.
Base Closure: No.
Comment: 2900 sq. ft.; 1 floor; most recent use—offices; needs rehab.; Navy owns bldg.—land leased from city; expires September 1990.

Pennsylvania

Suitable Buildings (by Agency)

Navy

Marine Corp. Reserve Center.
RR 2, Box 569B.
Newcastle, PA Co: Lawrence 16101-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010024.
Status: Unutilized.
Base Closure: No.
Comment: 17000 sq. ft.; 1 floor; most recent use—offices; needs rehab.

Texas

Suitable Buildings (by Agency)

Navy

Bldg. 2435.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010161.
Status: Underutilized.
Base Closure: No.
Comment: 1730 sq. ft.; 1 story residence.
Bldgs. 2436, 2424, 2433, 2428.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010162, 779010181-779010183.
Status: Underutilized.
Base Closure: No.
Comment: 3352 sq. ft. each; 1 story residences.
Bldgs. 2460, 2462, 2464, 2468, 2472, 2476, 2451, 2458, 2461, 2473, 2478, 2480, 2484, 2486-2488, 2494, 2500, 2502, 2506, 2508, 2525.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010163-779010164, 779010165, 779010168-779010170, 779010193-779010202, 779010203-779010208.
Status: Underutilized.
Base Closure: No.
Comment: 1758 sq. ft. each; 1 story residences.
Bldg. 2466.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010166.
Status: Underutilized.
Base Closure: No.
Comment: 1576 sq. ft.; 1 story residence.
Bldgs. 2467, 2423, 2427, 2431.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010167, 779010178-779010180.
Status: Underutilized.
Base Closure: No.
Comment: 3532 sq. ft. each; 1 story residences.
Bldg. 2482.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010171.
Status: Underutilized.
Base Closure: No.
Comment: 1760 sq. ft.; 1 story residence.
Bldg. 2495.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
Property Number: 779010172.
Status: Underutilized.

Base Closure: No.
 Comment: 1760 sq. ft.; 1 story residence.
 Bldg. 2514.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010173.
 Status: Underutilized.
 Base Closure: No.
 Comment: 1730 sq. ft.; 1 story residence.
 Bldgs. 2518, 2520, 2522, 2526, 2509, 2511-2512, 2527.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Numbers: 779010174-779010177, 779010224-779010227.
 Status: Underutilized.
 Base Closure: No.
 Comment: 1676 sq. ft.; 1 story residence.
 Bldgs. 2429, 2454, 2477, 2485, 2499, 2503, 2507, 2513, 2521.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Numbers: 779010184-779010192
 Status: Underutilized.
 Base Closure: No.
 Comment: 3152 sq. ft. each; 1 story residences.
 Bldgs. 2452, 2475, 2479, 2497, 2501, 2505, 2515, 2517, 2519, 2523.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Numbers: 779010209-779010218.
 Status: Underutilized.
 Base Closure: No.
 Comment: 3358 sq. ft. each; 1 story residences.
 Bldg. 2465.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010219.
 Status: Underutilized.
 Base Closure: No.
 Comment: 1576 sq. ft.; 1 story residence.
 Bldg. 2493.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010220.
 Status: Underutilized.
 Base Closure: No.
 Comment: 1576 sq. ft.; 1 story residence.
 Bldg. 2510.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010221.
 Status: Underutilized.
 Base Closure: No.
 Comment: 1576 sq. ft.; 1 story residence.
 Bldg. 2474.
 Laguna Housing Area.
 NAS Corpus Christi.

Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010222.
 Status: Underutilized.
 Base Closure: No.
 Comment: 3528 sq. ft.; 1 story residence.
 Bldg. 2481.
 Laguna Housing Area.
 NAS Corpus Christi.
 Corpus Christi, TX Co: Nueces 78419-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010223.
 Status: Underutilized.
 Base Closure: No.
 Comment: 3528 sq. ft.; 1 story residence.

Virginia

Suitable Land (by Agency)

Navy

Naval Base.
 Norfolk, VA Co: Norfolk 23508-
 Location: Northeast corner of base, near Willoughby housing area.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010156.
 Status: Unutilized.
 Base Closure: No.
 Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

West Virginia

Suitable Buildings (by Agency)

Navy

Naval & Marine Corps Res. Ctr.
 N. 13th St. & Ohio River.
 Wheeling, WV Co: Ohio 26003-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010077.
 Status: Excess.
 Base Closure: No.
 Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Unsuitable Properties

Alabama

Unsuitable Buildings (by Agency)

Air Force

HQ Specified Bldg.
 Maxwell AFB.
 677 Third Street.
 Montgomery, AL Co: Montgomery 36112-.
Federal Register Notice Date: 05/17/91.
 Property Number: 189120231.
 Status: Unutilized.
 Base Closure: No.
 Reason: Secured Area.
 Base Personnel Office.
 Maxwell AFB.
 653 Second Street.
 Montgomery, AL Co: Montgomery 36112-.
Federal Register Notice Date: 05/17/91.
 Property Number: 189120232.
 Status: Unutilized.
 Base Closure: No.
 Reason: Secured Area.

California

Unsuitable Land (by Agency)

Navy

Salton Sea Test Range.

ElCentro, CA Co: Imperial 93555-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010068.
 Status: Excess.
 Base Closure: No.
 Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldg. 105, 165.
 Naval FPS, CVB Detachment.
 Monterey, CA Co: Monterey 93940-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010159-779010160.
 Status: Unutilized.
 Base Closure: No.
 Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146.
 Naval Facilities Point Sur.
 CVB Detachment.
 Monterey, CA Co: Monterey 93940-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010268.
 Status: Unutilized.
 Base Closure: No.
 Reason: Other.
 Comment: Sewer treatment facility.

Delaware

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1900.
 436 CSG Dover AFB.
 Dover, DE Co: Kent 19902-5518.
Federal Register Notice Date: 05/17/91.
 Property Number: 189120230.
 Status: Unutilized.
 Base Closure: No.
 Reason: Within airport runway clear zone Secured Area.

Florida

Unsuitable Land (by Agency)

Navy

Boca Chica Field.
 Naval Air Station.
 Key West, FL Co: Monroe 23040-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010097.
 Status: Unutilized.
 Base Closure: No.
 Reason: Floodway.
 East Martello Battery #2.
 Naval Air Station.
 Key West, FL Co: Monroe 33040-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010099.
 Status: Excess.
 Base Closure: No.
 Reason: Within airport runway clear zone.
 East Martello Battery #2.
 Naval Air Station.
 Key West, FL Co: Monroe 33040-.
Federal Register Notice Date: 05/17/91.
 Property Number: 779010275.
 Status: Excess.
 Base Closure: No.
 Reason: Within airport runway clear zone.

Unsuitable Buildings (by Agency)

East Martello Bunker #1.
 Naval Air Station.

Key West, FL Co: Monroe 33040-
Federal Register Notice Date: 05/17/91.
Property Number: 779010101.
Status: Excess.
Base Closure: No.
Reason: Within airport runway clear zone.

Georgia

Unsuitable Land (by Agency)

Navy

Naval Submarine Base.
 Grid G-5 to G-10 to Q-6 to P-2.
 Kings Bay, GA Co: Camden 31547-
Federal Register Notice Date: 05/17/91.
Property Number: 779010228.
Status: Underutilized.
Base Closure: No.
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Naval Submarine Base—Kings Bay.
 1011 USS Daniel Boone Avenue.
 Kings Bay, GA Co: Camden 31547-
Federal Register Notice Date: 05/17/91.
Property Number: 779010107.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

Illinois

Unsuitable Buildings (by Agency)

Navy

Bldg. 928, 28, 25, 2.
 Naval Training Center.
 Great Lakes.
 Great Lakes, IL Co: Lake 60088-
Federal Register Notice Date: 05/17/91.
Property Number: 779010120, 779010123,
 779010126, 779010128.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.
 South Wing—Building No. 62.
 Great Lakes, IL Co: Lake 60088-5000.
Federal Register Notice Date: 05/17/91.
Property Number: 779110001.
Status: Underutilized.
Base Closure: No.
Reason: Secured Area.

North Carolina

Unsuitable Buildings (by Agency)

Air Force

Bldg. 4230—Youth Center.
 Cannon Ave.
 Goldsboro, NE Co: Wayne 27531-5005.
Federal Register Notice Date: 05/17/91.
Property Number: 189120233.
Status: Underutilized.
Base Closure: No.
Reason: Secured Area.

New York

Unsuitable Buildings (by Agency)

Navy

Bldg. 204, 255, T-370.
 Naval Underwater Systems Center.
 Fisher's Island Annex Detachment.
 Fisher's Island, NY Co: Suffolk 06390-
Federal Register Notice Date: 05/17/91.
Property Number: 779010270-779010272.
Status: Excess.

Base Closure: No.
Reason: Secured Area.

Pennsylvania

Unsuitable Buildings (by Agency)

Navy

Bldg. 62.
 Philadelphia Naval Shipyard.
 Philadelphia, PA Co: Philadelphia 19112-
Federal Register Notice Date: 05/17/91.
Property Number: 779010112.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or
 explosive material Secured Area.

Rhode Island

Unsuitable Buildings (by Agency)

Navy

Bldg. C104.
 Naval Construction Battalion Center.
 Davisville, RI 02854-
Federal Register notice date: 05/17/91.
Property Number: 779010020.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or
 explosive material, Secured Area.
 Bldg. 32.
 Naval Underwater Systems Center.
 Gould Island Annex.
 Middletown, RI Co: Newport 02840-
Federal Register notice date: 05/17/91.
Property Number: 779010273.
Status: Excess.
Base Closure: No.
Reason: Secured Area.
 Bldg. S-85, 337, 58, 363, S-121, C101, W319,
 368, C102, 43, 44, C103, 102, S-16, 101, S-8,
 T13-B, 45.
 Naval Construction Battalion Center.
 Davisville, RI Co: Washington 02854-
Federal Register notice date: 05/17/91.
Property Number: 779010001-779010019.
Status: Excess.
Base Closure: No.
Reason: Within 2000 ft. of flammable or
 explosive material, Secured Area.
 Bldg. 295, 279.
 Naval Construction Battalion Center.
 Davisville, RI Co: Washington 02854-
Federal Register notice date: 05/17/91.
Property Number: 779010021-779010022.
Status: Excess.
Base Closure: No.
Reason: Within 2000 ft. of flammable or
 explosive material, Floodway, Secured
 Area.

72 Buildings.

Naval Construction Battalion Center.
 Davisville, RI Co: Washington 02854-
Federal Register notice date: 05/17/91.
Property Number: 779010023, 779010025,
 779010027-779010035, 779010037-779010040,
 779010042-779010061, 779010063-779010065,
 779010067, 779010069-779010072, 779010074,
 779010076, 779010078-779010079,
 779010232-779010253, 779010276, 779010018,
 779010036.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or
 explosive material, Secured Area.

Bldg. A-63.

Naval Construction Battalion Center.
 Davisville, RI Co: Washington 02854-
Federal Register notice date: 05/17/91.
Property Number: 779010277.
Status: Excess.
Base Closure: No.
Reason: Secured Area.
Comment: Record duplicated by #779010070.
 Bldg. A-64.
 Naval Construction Battalion Center.
 Davisville, RI Co: Washington 02854-
Federal Register notice date: 05/17/91.
Property Number: 779010278.
Status: Excess.
Base Closure: No.
Reason: Secured Area.

South Dakota

Unsuitable Buildings (by Agency)

Air Force

101 Buildings—Skyway.
 Ellsworth Air Force Base.
 Ellsworth, SD Co: Pennington 57706-
Federal Register notice date: 05/17/91.
Property Number: 189120066-189120166.
Status: Unutilized.
Base Closure: No.
Reason: Other.
Comment: Extensive deterioration.
 63 Buildings—Renel Heights.
 Ellsworth Air Force Base.
 Ellsworth, SD Co: Pennington 57706-
Federal Register notice date: 05/17/91.
Property Number: 189120167-189120229.
Status: Unutilized.
Base Closure: No.
Reason: Other.
Comment: Extensive deterioration.

Texas

Unsuitable Buildings (by Agency)

Navy

20 Buildings.
 Laguna Shores Housing Area.
 Corpus Christi, TX Co: Nueces 78419-
Federal Register notice date: 05/17/91.
Property Number: 779010279-779010298.
Status: Underutilized.
Base Closure: No.
Reason: Floodway.

Washington

Unsuitable Land (by Agency)

Navy

Land (Report 2), 234 acres.
 Naval Supply Center, Puget Sound.
 Manchester, WA Co: Kitsap 98353-
Federal Register notice date: 05/17/91.
Property Number: 779010231.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldg. 57.

Naval Supply Center, Puget Sound.
 Manchester, WA Co: Kitsap 98353-
Federal Register notice date: 05/17/91.
Property Number: 779010091.
Status: Unutilized.
Base Closure: No.

Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 47 (Report 1).

Naval Supply Center, Puget Sound.

Manchester, WA Co: Kitsap 98353-.

Federal Register notice date: 05/17/91.

Property Number: 779010230.

Status: Unutilized.

Base Closure: No.

Reason: Secured Area.

[FR Doc. 91-11557 Filed 5-16-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-01-4320-08]

Management Framework Plan Amendment and Environmental Assessment; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of draft Management Framework Plan Amendment and Environmental Assessment; and Proposed Area of Critical Environmental Concern Designations.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) and the National Environmental Policy Act (NEPA, section 102(2)(C)) the Boise District, BLM has prepared a draft amendment to the Bruneau Management Framework Plan and an environmental assessment (EA) on a proposal to designate three sites as areas of critical environmental concern (ACECs). This notice is also issued pursuant to § 1610.7-2(b) of the BLM Planning Regulation. The draft plan amendment and EA are now available for public review and comment.

DATES: The public comment period for the draft plan amendment and EA will close on August 12, 1991. Written comments should be mailed to the address listed below. Public meetings have not been scheduled.

ADDRESSES: Written Comments should be mailed to: Bruneau Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Bruneau Area Manager or Fred Minckler, Team Leader at the Bureau of Land Management, 3984 Development Avenue, Boise, ID 83705. Telephone (208) 384-3300.

SUPPLEMENTARY INFORMATION: The Bruneau Management Framework Plan (MFP) is a land use plan for public lands within the Bruneau Resource Area administered by BLM in southwest

Idaho. The Boise District has prepared an amendment which addresses special management actions and designation of three sites ranging in size from five to 346 acres as ACECs to protect rare and undisturbed plant populations and other resource values. The three sites are: Mud Flat Oolite, five acres; Triplet Butte, 322 acres; and Cottonwood Creek, 346 acres. Resource use limitations proposed for these areas address: Livestock grazing; motorized vehicle use; rights-of-way; mineral leasing, location and disposal; water developments and fire suppression and rehabilitation. An environmental assessment (EA) has been prepared on the amendment. Public review and comments on the amendment and the environmental assessment prepared on the amendment will be accepted for 90 days.

Dated: May 9, 1991.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 91-11702 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-GG-M

[CA-010-01-3110-10-B002; CA 28092]

Realty Action Exchange of Public and Private Lands in San Luis Obispo County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 28092.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.28S., R.13E.,

Sec. 19, #E½SE¼.

Containing 80 acres.

All mineral rights on the subject public land will be exchanged, along with the surface rights. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from the Nature Conservancy (TNC) in the Carrizo Plain Natural Area. These lands will be purchased by TNC from willing sellers, will be somewhere within the following sections, and will include surface rights only:

Mt. Diablo Meridian California

T.30S., R.20E., Sec. 19 to 22, 25 to 31, and 34 to 36

T.30S., R.21E., Sec. 23 to 36

T.30S., R.22E., Sec. 31

T.31S., R.20E., Sec. 1 to 3, 10 to 13, 15, 17, and 20 to 25

T.31S., R.21E., Sec. 1 to 4, 6, 7, 10 to 25, 27 to 29, and 32 to 36

T.31S., R.22E., Sec. 3, 6, 7, and 17 to 21

T.32S., R.20E., Sec. 19, 26, and 27

T.32S., R.21E., Sec. 1 to 5, and 10 to 13

T.32S., R.22E., Sec. 6, 7, 16, 19 to 22, 27 to 33, 35, and 36

San Bernardino Meridian, California

T.12N., R.27W., Sec. 35

T.12N., R.26W., Sec. 31, and 33 to 36

T.12N., R.25W., Sec. 31 to 33, and 36

T.11N., R.27W., Sec. 1 to 4, and 10 to 14

T.11N., R.26W., Sec. 1 to 18, 20 to 25, and 36

T.11N., R.25W., Sec. 3, 6, and 7 to 35

T.11N., R.24W., Sec. 18 to 20 and 29 to 32

T.10N., R.26W., Sec. 11 and 12

T.10N., R.25W., Sec. 3, 7, 8, 12, and 16.

SUPPLEMENTARY INFORMATION: A notice was originally published in the *Federal Register* for the subject public land on December 3, 1987 in Vol. 52, No. 232 and corrected on October 4, 1988 in vol. 53, No. 192. At that time, the subject public land was included in land exchange number CA 20050. This notice changes the land exchange number to CA 28092, and adds to the exchange the oil and gas rights on the subject public lands.

The purpose of the exchange is to acquire a portion of the private lands in the Carrizo Plain Natural Area. This Area will promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The ultimate goal for the Natural Area is to acquire approximately 155,000 acres of private land. A secondary purpose of the exchange is to consolidate the BLM lands and reduce the number of scattered, isolated BLM parcels that are difficult to manage. The public interest will be well served by completing the exchange. The exchange will operate under the Cooperative Land Exchange Agreement between BLM and TNC within California, dated August 16, 1990. Under that agreement, BLM and TNC will "pool" offered private land and selected public land throughout California and convey said lands through exchanges between the two parties. Values of lands conveyed from the pool will be balanced on a statewide basis at least every two years.

Lands transferred from the United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Publication of this notice in the *Federal Register* segregates the subject public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative

effect will end upon issuance of patent or two years from the date of publication in the *Federal Register*, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Caliente Resource Area, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, CA 93308; (805) 861-4236.

DATES: No comments were received on the exchange of the subject public land based on the original notice of December 3, 1987. That notice did not include the exchange of the oil and gas rights on the subject public land, since it was expected that the subject public land would have some potential for oil and gas deposits. Further studies have shown no potential for oil and gas deposits on the subject public land, and the oil and gas rights will now be exchanged. Interested parties may submit comments to the Area Manager at the above address until July 1, 1991 only on the exchange of the oil and gas rights on the subject public land, since a full comment period was allowed after the publication of the original notice.

Dated: April 30, 1991.

Glenn A. Carpenter,
Caliente Resource Area Manager.

[FR Doc. 91-11062 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-09-4212-13; CA-28048]

Realty Action; Exchanges of Public and Private Lands, Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchanges of public and private lands, CA-28048.

SUMMARY: The following described public lands, located in Riverside County, California are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

NOTE: Not all of the lands identified below will be involved in land exchanges. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve equal fair market value between the selected public and the offered private lands.

Selected Public Land

San Bernardino Meridian, California

T. 3 S., R. 3 E.,

Sec. 6: W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 5.00 acres, more or less.

T. 2 S., R. 4 E.,

Sec. 8: NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$.

Containing 280 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. LA-047358.

T. 3 S., R. 4 E.,

Sec. 4: E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grants, Serial No.(s) CA-15556 & CA-19953.

Sec. 4: W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-07607, LA-054902 & LA-063162.

Sec. 18: Lots 6 & 7.

Containing 12.36 acres, more or less.

Sec. 18: S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 10.00 acres, more or less

Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-395, R-01736, LA-0169703 & LA-084717.

Sec. 18: NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 2.5 acres, more or less.

Sec. 18: E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 5.0 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. LA-0169703.

Sec. 18: N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 20.00 acres, more or less.

Sec. 18: SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 10.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-1091.

Sec. 18: W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

Sec. 18: E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

T. 3 S., R. 5 E.,

Sec. 12: Lots 29 through 31 (S $\frac{1}{2}$ portions).

Containing 6.12 acres, more or less.

Sec. 12: Lots 33 through 35.

Containing 15.00 acres, more or less

Disposal of this parcel would be subject to R/W grant, Serial No. CA-3752.

Sec. 12: N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

Sec. 12: W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-06884 & LA-051061.

T. 3 S., R. 5 E.,

Sec. 28: Lots 44, 47, 48 & 58.

Containing 20 Acres, more or less.

Sec. 34: Lots 60, 63 & 68.

Containing 15.00 acres, more or less

Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-07607, LA-063162, CA-3659, CA-4163 & CA-17905.

T. 5 S., R. 5 E.,

Sec. 36: N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-06215 & R-257.

Sec. 36: W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

Sec. 36: S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-06483.

Sec. 36: N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

Sec. 36: E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grant, Serial No. R-06483.

T. 3 S., R. 6 E.,

Sec. 6: S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

T. 3 S., R. 6 E.,

Sec. 8: E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

T. 3 S., R. 6 E.,

Sec. 8: NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 3.00 acres, more or less

Disposal of this parcel would be subject to R/W grant, Serial No. R-06215.

T. 3 S., R. 6 E.,

Sec. 22: SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 10.00 acres, more or less

Disposal of this parcel would be subject to R/W grants, Serial No.(s) LA-051061, LA-051290, R-06884, CA-16385 & CA-16386.

Sec. 22: S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grant, Serial No.(s) R-06884, CA-16385 & CA-16386.

T. 3 S., R. 6 E.,

Sec. 26: N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

Sec. 26: SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 2.50 acres, more or less.

Sec. 26: S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grant, Serial No. R-06894.

T. 3 S., R. 6 E.,

Sec. 28: N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

Containing 5.00 acres, more or less

Disposal of this parcel would be subject to R/W grant, Serial No. R-06884.

Sec. 28: S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

T. 5 S., R. 6 E.,

Sec. 30: Lot 60.

Containing 5.11 acres, more or less.

T. 4 S., R. 7 E.,

Sec. 4: Lots 5 (5.00 acres), 7 (5.68 acres), 8 (5.00 acres), 11 (5.87 acres), 13 (5.00 acres), 15 (5.66 acres), 17 (5.00 acres), 21 (5.00 acres), 22 (5.00 acres), 27 (5.63 acres), 29 (5.00 acres), 30 (5.00 acres), 31 (5.61 acres), 35 (5.00 acres), 42 (5.00 acres), 43 (5.00 acres), 45 (5.00 acres), 56 (5.00 acres), 57 (5.00 acres), 60 (5.00 acres), 61 (5.00 acres), 62 (5.00 acres).

Disposal of Lots 5, 13, 21, 22, 29, 30, 35, 42, 56 & 57 would be subject to R/W grant, Serial No. CA-4061; disposal of Lot 42 would also be subject to R/W grants No.(s) CA-16385 & CA-16386.

Sec. 4: N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 5.00 acres, more or less.

Sec. 4: SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 10.00 acres, more or less
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 4: S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 5.00 acres, more or less
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 4: S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 5.00 acres, more or less
Disposal of this parcel would be subject to R/
W grants, Serial No.(s) LA-051327 & LA-
0156361.

Sec. 4: SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 10.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 4: S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 5.00 acres, more or less.

Sec. 4: SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 10.00 acres, more or less.

Sec. 4: N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 5.00 acres, more or less.

Sec. 4: S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 5.00 acres, more or less
Disposal of this parcel would be subject to R/
W grants, Serial No.(s) CA-16385 & CA-
16386.

Sec. 4: N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 5.00 acres, more or less
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 4: NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 10.00 acres, more or less.

Sec. 4: N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 5.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grants, Serial No.(s) CA-4061, CA-16385 &
CA-16386.

Sec. 4: SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 10.00 acres, more or less.

Sec. 4: N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 5.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grants, Serial No. CA-4061 & LA-051061.

T. 4 S., R. 7 E.,
Sec. 10: S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.
Containing 5.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 10: S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.
Containing 5.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 10: SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.
Containing 10.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 10: N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 5.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grants, Serial No.(s) CA-4061 & LA-
0156381.

Sec. 10: N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 5.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grant, Serial No. LA-0156361.

T. 4 S., R. 7 E.,

Sec. 14: N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 10.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 14: S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 5.00 acres, more or less.
Disposal of this parcel would be subject to R/
W grant, Serial No. CA-4061.

Sec. 14: N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 5.00 acres, more or less..

T. 5 S., R. 7 E.,
Sec. 12: NW $\frac{1}{4}$ SE $\frac{1}{4}$.
Containing 40.00 acres, more or less.

T. 5 S., R. 7 E.,
Sec. 30: NW $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 41.61 acres, more or less.

T. 4 S., R. 8 E.,
Sec. 32: NE $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 40.00 acres, more or less.

T. 5 S., R. 8 E.,
Sec. 6: Lots 1 through 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$
NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$.
Containing 649.70 acres, more or less.

T. 7 S., R. 8 E.,
Sec. 30: Lots 1 & 2 of the NW $\frac{1}{4}$, Lots 1 & 2
of the SW $\frac{1}{4}$, E $\frac{1}{2}$.
Containing 627.10 acres, more or less.

Total public lands amounts to 2,465.45
acres, more or less.

In exchange for these lands the United
States will acquire from The Nature
Conservancy (TNC) 1,371 acres, more or
less, of private lands within the Salt
Creek Area of Critical Environmental
Concern (ACEC) as described in the
Notice of Realty Action (NORA)
published in Volume 55, Number 144,
Page 30527 of the Federal Register, dated
July 26, 1990 and 3,207.24 acres, more or
less, of private lands within the Santa
Rosa Mountains National Scenic Area
(SRMNSA) as described in the NORA
published in Volume 56, Number 17,
Page 2942 of the Federal Register, dated
January 25, 1991.

In exchange for the selected public
lands, the United States would acquire
from TNC the following additional
offered private land within the Santa
Rosa Mountains National Scenic Area:

San Bernardino Meridian

T. 6 S., R. 6 E.,
Sect. 25: All.
Containing 640 acres, more or less.

SUPPLEMENTARY INFORMATION: The
purpose of these land exchanges is to
acquire non-federal lands within the
Santa Rosa Mountains National Scenic
Area (SRMNSA) and the Salt Creek
ACEC. The exchanges would create a
more logical and efficient land
management pattern and enhance the
Bureau of Land Management's goal to
dispose of isolated unclassified public
lands in exchange for private lands
within the above described special
management areas. The proposed

exchanges would be processed in stri-
conformance with the Land-Tenure
Adjustment Element of the California
Desert Conservation Area (CDCA) Plan.
Acquisition of private lands within the
SRMNSA and Salt Creek ACEC is
needed to protect wildlife, recreation,
cultural and aesthetic values in the
Santa Rosa Mountains and the Salt
Creek ACEC, as described in the
previous NORA publications cited
above.

The public lands proposed for
disposal in the pooled land exchanges
are unclassified in the CDCA Plan and
are generally isolated parcels
surrounded by private lands with
limited or no public access. The
exchanges are being pursued with the
view that disposal of isolated public
lands and acquisition of offered private
lands within the Salt Creek ACEC and
the Santa Rosa Mountains National
Scenic Area would serve the public
interest.

The selected public lands will be used
to equalize land values for offered
private lands within the Salt Creek
ACEC and the SRMNSA pursuant to the
exchange pooling agreement between
TNC and BLM. The Bureau of Land
Management has entered into a land
exchange pooling agreement with TNC
to acquire the above-listed offered
private lands and additional private
lands within these special management
areas through a series of land exchanges
to occur within the next two years until
the values of the offered and selected
lands reach equal fair market value as
described by regulation.

The exchanges will be completed on
an equal value basis. Full equalization
of values will be achieved through either
acreage adjustment or by cash payment
in an amount not to exceed 25% of the
value of the lands being transferred out
of federal ownership at the conclusion
of the pooled land exchange process.

The exchanges will not be completed
until all necessary field inventories,
environmental assessments, and mineral
reports are completed.

The land to be transferred from the
United States will be subject to the
following reservations:

1. A reservation to the United States
of a right-of-way for ditches and canals
constructed by the authority of the
United States; Act of August 30, 1890 (43
U.S.C. 945).

2. All minerals will be conveyed
unless following the completion of
mineral reports, the authorized officer
will determine what, if any, mineral
interests will need to be reserved for the
United States based upon the presence
and value of mineral deposits.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. This segregative effect will expire upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

For detailed information concerning this action contact Russell L. Kaldenberg, BLM Palm Springs-South Coast Resource Area, at (619)-323-4421.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 6221 Box Springs Boulevard, Riverside, CA 92507-0714. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination.

Dated: April 19, 1991.

Jean Rivers-Council,
Acting District Manager.

[FR Doc. 91-11742 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-4212-13; CACA 28162]

Realty Action; Exchange of Public Land, CA

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of Public Land in El Dorado County, CA.

SUMMARY: The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Selected Public Land

El Dorado County, California

T. 9N., R.10E., M.D.M.

Sec. 12: lot 16, M.S. 6303, and public land within both the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$.

Sec. 13: lots 7, 8 exclusive of M.S.6420, and public land within N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Aggregating Approximately 115 acres.

SUPPLEMENTARY INFORMATION: The Federal land identified above consists of several fragmented irregularly shaped lots that are difficult and uneconomic to manage as part of the public lands. In addition it is not suitable for management by another Federal Agency and is of limited value to the public. This land would be used by the BLM in its exchange program to acquire private land that has significant multiple use values, particularly for recreation. The exchange would be facilitated through the American River Land Trust. The proposal is in conformance with the

Bureau's land use plans and is considered to be in the public interest.

The Federal lands would be transferred subject to certain reservations, terms and conditions. There would be reserved to the United States a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945); also rights-of-way of record would be identified as prior existing rights. All necessary clearances including clearances for archeology, rare plants and animals would be completed prior to any conveyance of title by the U.S. This action would involve a transfer of the surface and mineral estate.

The selected public land described above is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register**.

(This notice deals exclusively with the selected Federal land listed above. The offered private land was previously published as required by 43 CFR 2201.1(a), and the comment period relative to the private land has been completed.)

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments concerning the Federal land to the District Manager, C/O Folsom Area Manager, Folsom Resource Area, 63 Natoma St., Folsom, CA. 95630.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at (916) 985-4474 or at the address above.

D.K. Swickard,
Area Manager.

[FR Doc. 91-11745 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-40-M

[ID-050-010-4212-14]

Gooding County, Idaho; Realty Action

AGENCY: Bureau of Land Management, Idaho.

ACTION: Amend Notice of Realty Action (NORA) 51 FR 34151, dated September 25, 1986, to update values and establish a new sale date for a competitive sale of public lands in Gooding County, Idaho.

SUMMARY: The two parcels of public land remaining to be sold, will be reoffered for sale in July, 1991. Reappraisal procedures have established land values as follows:

Parcel	Fair market value
IDI-20413 T.6 S., R.13 E. B.M. Sec.11: E $\frac{1}{2}$ NW $\frac{1}{4}$ (80 acres).....	\$14,000
IDI-20414 T.6 S., R.13 E. B.M. Sec.11: S $\frac{1}{2}$ SW $\frac{1}{4}$ (80 acres).....	14,000

DATES: July 19, 1991.

ADDRESSES: BLM District Office, Bennett Hills Resource Area, 400 West F Street, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: The procedures identified in the NORA issued September 25, 1986, remain in effect except for value, date and time changes. Sale reoffering will be on Friday, July 19, 1991 at 1 p.m. All sealed bids must be submitted prior to that date and time. If no qualified bids are received at this offering, the parcels will be reoffered on the third Friday of each succeeding month at 1 p.m. until sold or the sale is suspended or canceled. For more information contact the Bennett Hills Area Manager, or Realty Specialist at the Shoshone District Office or phone (208) 886-2206. For more information contact the Bennett Hills Area Manager, or Realty Specialist at the Shoshone District Office or phone (208) 886-2206. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the amended NORA. Comments will be evaluated and the amended NORA may be vacated, modified, or affirmed. In the absence of any objections, this amended NORA will become the final decision of the Department.

Dated: May 8, 1991.

Janis VanWyhe,
Acting District Manager.

[FR Doc. 91-11743 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 10, 1991.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 24 and 25, T. 8 S., R. 15 E., Boise Meridian, Idaho, Group No. 797, was accepted, May 7, 1991.

The plat representing the depending resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of sections 19 and 30, T.

8 S., R. 16 E., Boise Meridian, Idaho, Group No. 797, was accepted May 7, 1991.

The plat representing the dependent resurvey of portions of the First Standard Parallel South (south boundary) and the subdivisional lines, and the subdivision of sections 21, 22, and 33, T. 6 S., R. 19 E., Boise Meridian, Idaho, Group No. 797, was accepted May 7, 1991.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 3, T. 7 S., R. 19 E., Boise Meridian, Idaho, Group No. 797, was accepted May 7, 1991.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines, and the subdivision of sections 1 and 12, T. 18 N., R. 20 E., Boise Meridian, Idaho, Group No. 805, was accepted May 3, 1991.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the surveys of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 10, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-11701 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

California; Realty Action

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of realty action.

SUMMARY: The following described tract of land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than \$11,000, the appraised value.

DATES: July 17, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Buddy Smith, Bureau of Reclamation, Route 1, Box 35, Byron, California, 94514-9614 (10 miles west of Tracy at Mountain House and Kelso Roads), telephone: (209) 836-6201.

SUPPLEMENTARY INFORMATION: The property is described as a tract of land in the City of Concord, County of Contra Costa, State of California, said tract of

land being a portion of the 6.66-acre parcel of land described in the Grant Deed to the United States recorded March 21, 1939, in Book 494 at page 351 of the Official Records of said county, containing an area of 0.09 acre, more or less.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Bureau of Reclamation at the above address July 17, 1991, at which time the sealed bids will be opened. Sealed bids will be accepted at the Tracy Office until close of business on June 28, 1991. The Bureau of Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. Should the land remain unsold, it may be reoffered for sale at a later date as determined by the Regional Director. In order to promote full and free competition, the bid forms required for this sale contain a statement that the purchase price has been determined independently by the bidder; this statement must accompany each sealed bid.

The sale of the land is consistent with the Bureau of Reclamation land use planning, and it was determined that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Tracy Office.

The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California, 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify the Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: April 28, 1991.

Joe D. Hall,

Deputy Commissioner,

[FR Doc. 91-11738 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029-0033), Washington, DC 20503, telephone 202-395-7340.

Title: Part 772—Requirements for Coal Exploration.

OMB Number: 1029-0033.

Abstract: The requirements in section 512 of Public Law 95-87 provide that persons conducting coal exploration shall comply with exploration regulations issued by the regulatory authority. Information collection is needed to determine whether there will be substantial disturbance during exploration which is subject to the reclamation and environmental protection provisions of the Act.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Coal Mining Companies.

Annual Responses: 2,211.

Annual Burden Hours: 14,558.

Estimated Completion Time: 6.58 hours.

Bureau clearance officer: Richard L. Wolfe (202) 343-5143.

Dated: February 12, 1991.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91-11744 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, the Consent Decree, and 28 CFR 50.7, notice is hereby given on that on May 1, 1991 a proposed Consent Decree in *United States v. J. M. Huber Corporation*, Civil No. 90-0180-B, was

lodged with the United States District Court for the District of Maine. The complaint in this action was filed pursuant to the Clean Air Act, 42 U.S.C. 7413(b), for civil penalties and injunctive relief to abate violations caused by emissions of particulate matter which exceeded the particulate emission standard under the State Implementation Plan (SIP) enforceable by the Environmental Protection Agency ("EPA") at J. M. Huber Corporation's ("Huber") waferboard manufacturing facility in Easton, Maine.

Under the proposed Consent Decree Huber agrees to pay the United States and the State of Maine a total of civil penalty of \$328,000, or \$164,000 to the United States pursuant to this Consent Decree and \$164,000 to the State of Maine pursuant to a partial Consent Judgment in a comparison case, *State of Maine v. J. M. Huber Corporation*, Civil Action No. CV-90-329 (Kennebec County Superior Court). This payment covers Huber's liability for past emissions of particulate matter from two waferboard dryers. In addition, the Consent Decree provides for submission of reports by Huber and additional testing requirements on the dryers to EPA as well as stipulated penalties if Huber fails to provide this information. Huber has already installed and is currently operating pollution control equipment enabling the dryers to operate in compliance with the emission limit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States v. J. M. Huber Corporation*, DOJ #90-2-1-1470. The proposed Consent Decree may be examined at Region I, Office of the Environmental Protection Agency, J. F. Kennedy Federal Building, Boston, Massachusetts 02203-2211, and at the office of the United States Attorney, at 100 Middle Street Plaza, Portland, Maine or 202 Harlow Street, Bangor, Maine 04401.

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$2.50 (\$.25 per page

reproduction cost), for the Consent Decree.

Dated: May 8, 1991.

Richard B. Stewart,

Assistant Attorney General, U.S. Environment and Natural Resources Division.

[FR Doc. 91-11610 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, and 33 U.S.C. 1251 *et seq.*, notice is hereby given that on May 1, 1991, a proposed Consent Decree in *United States, et al. v. Pfizer Pigments, Inc., et al.*, Civil Action No. 89-7144, and *CORCO, et al. v. Pfizer Pigments, Inc., et al.*, No. 88-1359 were lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decrees require defendants Pfizer, Inc. and Pfizer Pigments, Inc. to pay a civil penalty of \$3,100,000 for violations to the Clean Water Act at an industrial facility formerly owned by Pfizer Pigments in Easton, Pennsylvania. Claims against other defendants in both cases remain pending.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Pfizer Pigments, Inc., et al.* DOJ Ref. No. 90-5-1-1-3273.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy please enclose a check in the amount of \$3.25 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-11615 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: These additions to the annual list of labor surplus areas are effective May 1, 1991.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEES, Washington, DC 20210. Telephone: 202-535-0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to

publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1990, (55 FR 42509).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b)(48 FR 15615 April 12, 1983) and are effective May 1, 1991.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on May 2, 1991.

Roberts T. Jones,
Assistant Secretary of Labor.

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS—MAY 1, 1991

Labor surplus area	Civil jurisdiction included
Maine:	
Balance of	
Androscoggin County	Androscoggin County Less
Lewiston City.....	Lewiston City
	Lewiston City in Andros-
	coggin County.
Oxford County.....	Oxford County.
Somerset County.....	Somerset County.

[FR Doc. 91-11784 Filed 5-16-91; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training
Administration, Labor.

ACTION: Notice.

DATES: These additions to the annual
list of labor surplus areas are effective
April 1, 1991.

SUMMARY: The purpose of this notice is
to announce additions to the annual list
of labor surplus areas.

FOR FURTHER INFORMATION CONTACT:
William J. McGarrity, Labor Economist,
Employment and Training
Administration, 200 Constitution
Avenue, NW., room N-4470, Attention:
TEESS, Washington, DC 20210.
Telephone: 202-535-0189.

SUPPLEMENTARY INFORMATION:
Executive Order 12073 requires

executive agencies to emphasize
procurement set-asides in labor surplus
areas. The Secretary of Labor is
responsible under that Order for
classifying and designating areas as
labor surplus areas. Executive agencies
should refer to Federal Acquisition
Regulation part 20 (48 CFR part 20) in
order to assess the impact of the labor
surplus area program on particular
procurements.

Under Executive Order 10582
executive agencies may reject bids or
offers of foreign materials in favor of the
lowest offer by a domestic supplier,
provided that the domestic supplier
undertakes to produce substantially all
of the materials in areas of substantial
unemployment as defined by the
Secretary of Labor. The preference given
to domestic suppliers under Executive
Order 10582 has been modified by
Executive Order 12260. Federal
Acquisition Regulation part 25 (48 CFR
part 25) implements Executive Order
12260. Executive agencies should refer
to Federal Acquisition Regulation part
25 in procurements involving foreign
businesses or products in order to
assess its impact on the particular
procurements.

The Department of Labor regulations
implementing Executive Orders 12073
and 10582 are set forth at 20 CFR part
654, subparts A and B. Subpart A
requires the Assistant Secretary of
Labor to classify jurisdictions as labor
surplus areas pursuant to the criteria
specified in the regulations and to
publish annually a list of labor surplus
areas. Pursuant to those regulations the
Assistant Secretary of Labor published
the annual list of labor surplus areas on
October 19, 1990, (55 FR 42509).

Subpart B of part 654 states that an
area of substantial unemployment for
purposes of Executive Order 10582 is
any area classified as a labor surplus
area under subpart A. Thus, labor
surplus areas under Executive Order
12073 are also areas of substantial
unemployment under Executive Order
10582.

The areas described below have been
classified by the Assistant Secretary of
Labor as labor surplus areas pursuant to
20 CFR 654.5(b)(48 FR 15615 April 12,
1983) and are effective April 1, 1991.

The list of labor surplus areas is
published for the use of all Federal
agencies in directing procurement
activities and locating new plants or
facilities.

Signed at Washington, DC on May 2, 1991

Roberts T. Jones,
Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas—April 1, 1991

Labor surplus area	Civil jurisdiction included
Rhode Island:	
Warren Town.....	Warren Town
Bristol Town.....	Bristol Town

[FR Doc. 91-11783 Filed 5-16-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Gordon Coal Co. et al.; Petitions for Modification

The following parties have filed
petitions to modify the application of
mandatory safety standards under
section 101(c) of the Federal Mine Safety
and Health Act of 1977.

1. Gordon Coal Company

[Docket No. M-91-34-C]

Gordon Coal Company, HC 66 Box
494, Artemus, Kentucky 40903 has filed a
petition to modify the application of 30
CFR 75.313 to its No. 7 Mine (I.D. No. 15-
16992) located in Knox County,
Kentucky. The petitioner proposes to
use a hand-held methane and oxygen
detector in lieu of machine-mounted
methane monitors on three-wheel
battery-powered tractors.

2. Consolidation Coal Company

[Docket No. M-91-35-C]

Consolidation Coal Company, 1800
Washington Road, Pittsburgh,
Pennsylvania 15241 has filed a petition
to modify the application of 30 CFR
75.305 to its Arkwright No. 1 Mine (I.D.
No. 46-01452) located in Monongalia
County, West Virginia. Due to
deteriorating roof and rib conditions, the
petitioner proposes to monitor methane
and oxygen from the surface.

3. Consolidation Coal Company

[Docket No. M-91-36-C]

Consolidation Coal Company, 1800
Washington Road, Pittsburgh,
Pennsylvania 15241 has filed a petition
to modify the application of 30 CFR
75.1105 to its No. 1 Mine (I.D. No. 46-
01867) located in Monongalia County,
West Virginia. The petitioner proposes
to enclose electrical equipment in a
monitored fireproof structure in lieu of
ventilating the equipment to the return.

4. Deep Star Mining, Inc.

[Docket No. M-91-37-C]

Deep Star Mining, Inc., P.O. Box 430, Northfork, West Virginia 24868 has filed a petition to modify the application of 30 CFR 75.305 to its No. 14 Mine (I.D. No. 46-01967) located in McDowell County, West Virginia. The petitioner proposes to evaluate the ventilation through a 300-foot area of a return entry in lieu of traveling.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1991.

Copies of the petitions are available for inspection at that address.

Dated: May 10, 1991.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 91-11785 Filed 5-16-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-42]

Earth Observing System (EOS) Engineering Review Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the Earth Observing System (EOS) Engineering Review Advisory Committee.

DATES: May 30, 1991, 8 a.m. to 5 p.m.; and May 31, 1991, 8 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Pine, Code SPS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1630).

SUPPLEMENTARY INFORMATION: The Earth Observing System (EOS) Engineering Review Advisory Committee advises the NASA

Administrator on possible alternatives for the implementation of the EOS Program, including the size of spacecraft, instrument configuration, and launch requirements and sequencing. The Committee will meet to discuss various perspectives on EOS, science uncertainties and issues, EOS instruments and spacecraft, and future Committee planning. The Committee is chaired by Dr. Edward Frieman and is composed of 8 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Committee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Thursday, May 30

8 a.m.—Introductory Remarks.

9 a.m.—Overview and Historical Perspective on EOS.

10 a.m.—Global Change Research Uncertainties.

11 a.m.—Pre-EOS Activities and Science.

1 p.m.—EOS Science Overview.

2:30 p.m.—Discussion of EOS Instruments.

3:30 p.m.—Discussion of Spacecraft and Launch Options.

5 p.m.—Adjourn.

Friday, May 31

8 a.m.—Perspectives on Committee Work and EOS Implementation.

10:30 a.m.—Discussion of Future Meeting Planning.

Noon—Adjourn.

John W. Gaff,

Advisory Committee Management Officer,
National Aeronautics and Space
Administration.

[FR Doc. 91-11730 Filed 5-16-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**Arts in Education Advisory Panel; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Education Collaboration Initiative Prescreening #1 Section) to the National Council on the Arts will be held on June 3, 1991 from 10 a.m.—3 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation,

and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel
Operations, National Endowment for the Arts.
[FR Doc. 91-11764 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Education Collaboration Initiative Prescreening #2 Section) to the National Council on the Arts will be held on June 4, 1991 from 9 a.m.—4 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11765 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on June 4, 1991 from 9 a.m.-2:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.-9:30 a.m. The topics will be opening remarks and general program overview.

The remaining portion of this meeting from 9:30 a.m.-2:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.

Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11766 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (States: Arts Projects in Underserved Communities Section) to the National Council on the Arts will be held on June 3, 1991, from 9 a.m.-6:30 p.m., June 4 from 8:30 a.m.-6:30 p.m. and June 5 from 8:30 a.m.-3:30 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be introductory remarks and orientation, application review, review of rankings and recommendation of awards, critique of guidelines and application review process for Arts Projects in Underserved Communities.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts,

Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11767 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Panel A Section) to the National Council on the Arts will be held on June 3, 1991, from 9 a.m.-7:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be opening remarks, application review, and ranking and recommendations.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11768 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Panel B Section) to the National Council on the Arts will be held on June 4, 1991, from 9 a.m.-7:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be opening remarks, application review, and ranking and recommendations.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 91-11769 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Panel C Section) to the National Council on the Arts will be held on June 5, 1991, from 9 a.m.-10 a.m. in room 730 at the Nancy

Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be application review, and funding recommendations.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 91-11770 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Overview Section) to the National Council on the Arts will be held on June 5, 1991, from 10 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be opening remarks, review of 1993 guidelines, and policy discussion.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 91-11771 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Date/Time: June 11-12, 1991-8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate engineering design unsolicited proposals.

Contact: Dr. Louis A. Martin-Vega, Program Director, Division of Design and Manufacturing Systems, National Science Foundation, room 1128, Washington, DC 20550 (202) 357-5167.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11709 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee to the Directorate for Education and Human Resources.

Date and Time: Monday, June 10, 1991, 9 a.m.-5 p.m., Tuesday, June 11, 1991, 9 a.m.-5 p.m.

Place: National Science Foundation; room 540; Washington DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, National Science Foundation, Washington, DC 20550, (202) 357-9522.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1992 Programs and Initiatives, Review of FY 1993 Programs and Initiatives, Strategic Planning for FY 1994 and Beyond.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11710 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Committee of Visitors; Meeting

The National Science Foundation announces the following meeting.

Name: Committee of Visitors Review of the Instructional Materials Development Program.

Date & Time: June 6 and 7, 1991; 8:30 to 5 on 6/6 and 9 to noon on 6/7.

Place: Room 540, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Alice Moses, Program Director, Rm. 635, National Science Foundation, Washington, DC 20550 telephone 202-357-7066.

Purpose of Meeting: To provide oversight review of the Instructional Materials

Development Program within the Division of Materials Development and Informal Science Education Division.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11706 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dates: June 6 & 7, 1991.

Times/Room: June 6: 8:30 a.m.-5 p.m., room 540, June 7: 8:30 a.m.-3 p.m., room 540.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, room 1225, Telephone Number: 202-357-7461.

Purpose of Meeting: To familiarize new members with the NSF human resource development activities in the Research Directorates as well as in the Directorate for Education and Human Resources; to meet with the new Director of the NSF; to learn about effective programs for encouraging girls in mathematics, for motivating minority youth through use of the computer, and new initiatives proposed by the American Council on Education; to provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.

Agenda: June 6—Presentations/ Discussions: 8:30 a.m.-12 p.m., Lunch: 12 noon, Presentations/Small Group Sessions: 1:30 p.m.-4:15 p.m., Full Committee Meeting: 4:15 p.m.; June 7—Full Committee Meeting: 8:30 a.m.-9 a.m., Presentations: 9:00-12 noon, Lunch: 12 noon, Presentations: 1:30 p.m.-2:30 p.m.; Adjournment: 3:00 p.m.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11707 Filed 5-6-91; 8:45 am]

BILLING CODE 7555-01-M

Human Resource Development Special Emphasis Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development.

Date and Time: June 3 and 4, 1991, 9 to 5 each day.

Place: Diplomat Room, State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.

Type of Meeting: Open.

Contact Person: Margrete S. Klein, Head, Women's Programs Section, National Science Foundation, 1800 G Street, NW., room 1225, Washington, DC 20550 (202) 357-7734.

Purpose of Meeting: A meeting of qualified scientists and engineers is necessary to establish a programmatic framework for women in science and engineering essential for the continued growth and retaining of women in the science and engineering fields.

Agenda: Opening remarks on the statistics of participation of women in science and engineering, followed by presentations and discussions concerning the identification of issues, problems and solutions at the K-12, undergraduate and graduate, and professional levels.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11708 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Committee name	St. address and room	Times	Date(s)
Proposal Review Panel for Undergraduate Science, Engineering, & Mathematics Education.	Holiday Inn—The Governor's Govern Hotel, House Hotel, Washington, DC.	7:30 p.m.-9 p.m. 8 a.m.-5 p.m. 8 a.m.-4 p.m.	06/09/91 06/10/91 06/11/91

Agenda: Leadership Laboratory Development Review Prop.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11705 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on May 29, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, May 29, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the Draft Safety Evaluation Reports (DSERs) corresponding to chapters 7, 11, 12, and 13 of the Electric Power Research Institute's (EPRI's) Requirements document for evolutionary designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the

meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-11693 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The Subcommittee on Advanced Boiling Water Reactors will hold a meeting on May 30, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, May 30, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the GE/ABWR design detail and layout.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions

with representatives of General Electric, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated May 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-11694 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-10749, License No. 48-16296-01; EA 90-152]

Midwest Inspection Services, Ltd., Green Bay, WI; Order Imposing Civil Monetary Penalty

I

Midwest Inspection Services, Ltd. is the holder of Byproduct Materials License No. 48-16296-01 initially issued by the Nuclear Regulatory Commission (NRC or Commission) on May 23, 1975. The license was most recently amended in its entirety on March 18, 1988, and is due to expire on October 31, 1992. The license authorizes the Licensee to use iridium-192 in the conduct of industrial radiography and cesium-137 for survey instrument calibration in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on July 24 through August 8, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 11, 1990. The Notice stated the nature of the

violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letter dated December 21, 1990. In its response, the Licensee admitted Violations A., B., D., and G., denied Violations C. and E., denied one example given in Violation F., and neither admitted or denied the other example in Violation F. The Licensee protested the civil penalty in whole and requested remission of the penalty.

III

After consideration of the Licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that five of the seven violations occurred as stated, that one violation (Violation E.) should be withdrawn, that one example of another violation (Violation F.) should be withdrawn, and that the \$10,000 penalty proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by \$1,428.57 to \$8,571.43.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of \$8,571.43 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this

Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation C. of the Notice referenced in section II above, and in Violation F. of the Notice as amended in the appendix to this Order, and

(b) whether, on the basis of these violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of May 1991.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusions

On October 11, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on July 24 through August 8, 1990. Midwest Inspection Service, Ltd. (Licensee) responded to the Notice in letters dated December 21, 1990 and March 27, 1991. In its responses, the Licensee admitted Violations A., B., D., and G., denied Violations C. and E., denied one example given in Violation F., and neither admitted nor denied the other example in Violation F.

In addition, the Licensee protested the civil penalty in whole and requested remission of the civil penalty. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

I. Restatement of Violation C

License Condition No. 20 requires that the Licensee conduct its program in accordance with statements, representations, and procedures contained in the application dated April 30, 1980 and a letter dated May 1, 1981. Attachment 6(g) of the referenced letter requires that the Licensee conduct quarterly field inspections of radiographic personnel.

Contrary to the above, a quarterly field inspection of a radiographer's assistant was not conducted in the second quarter of 1990, although the radiographer's assistant performed radiographic work on at least five days during that quarter.

This is a repeat violation.

Summary of Licensee's Response to Violation C.

The Licensee denies the violation and states that although the referenced individual was provided with personnel monitoring devices and trained in accordance with the Licensee's requirements for certification as a radiographer's assistant, he was actually a "helper," and was improperly listed on Licensee documents as a radiographer's assistant. The Licensee states that the individual's duties as a "helper" included: (1) Helping with driving, (2) developing film, (3) carrying and moving equipment, and (4) providing surveillance and making surveys under the direction of the radiographer.

The Licensee claims that when the Licensee's field inspection was conducted on the radiographer, the "helper" was not available for interview and the radiographer provided assurance that the "helper" did not perform the functions of a radiographer or a radiographer's assistant.

NRC's Evaluation of Licensee's Response to Violation C.

10 CFR part 34.2 defines a radiographer's assistant as any individual who, under the personal supervision of a radiographer, uses, among other things, radiation survey instruments in radiography. The Licensee's response (Item C.2D, letter dated December 21, 1990), indicates that one of the functions of the individual, whom the Licensee referred to as a "helper", is to make a radiation survey if directed to do so by a radiographer. Accordingly, the individual referred to by the Licensee as a "helper" meets the definition of a "radiographer's assistant" in 10 CFR part 34.2. Furthermore, during the NRC inspection, the Licensee's President and Radiation Safety Officer (RSO) confirmed that this individual performed radiography under the supervision of a radiographer on five occasions during the second quarter of 1990. The Licensee's President and RSO also confirmed that the required quarterly audit of this individual was not performed for the second quarter of 1990 because he was not at work while the auditor was on site. These confirmations were made in response to direct questions asked by the inspectors on August 8, 1990. Additional confirmation of the latter is also documented in the Licensee's December 21, 1990 response.

Based on the information collected by the inspectors during the inspection and the Licensee's December 21, 1990 response, it appears that: (1) The individual noted in Violation C. does

meet the definition of a "radiographer's assistant" in 10 CFR part 34.2, (2) this individual did not perform radiographic work on at least five occasions during the second quarter of 1990, and (3) this individual was not audited by the Licensee's RSO during the second quarter of 1990. Therefore, the NRC concludes that the Licensee's argument that the individual did not perform as a radiographer's assistant and, therefore, was not required to be audited by the Licensee, is without merit and does not provide a basis for withdrawing the violation.

II. Restatement of Violation E

10 CFR part 34.24 requires, in part, that each survey instrument used to conduct physical radiation surveys be calibrated at intervals not to exceed three months and after each instrument servicing.

Contrary to the above, on nine occasions from April 9 through April 20, 1990, physical radiation surveys were conducted with a survey instrument which was last calibrated on November 30, 1989.

Summary of Licensee's Response to Violation E.

The Licensee denies the violation and states that the information documented in the licensee's records, which indicates the use of a particular survey meter (Serial No. 0099) that had not been calibrated in accordance with 10 CFR part 34.24, is in error. The Licensee further submitted a signed, sworn statement from the employee involved in the error, stating that he did not use an uncalibrated survey instrument and that the information in the log documenting his use of the Serial No. 0099 survey meter was, in fact, a memory recording error.

NRC's Evaluation of Licensee's Response to Violation E.

Based on the additional information provided by the Licensee, including the sworn statements of its employee, NRC is withdrawing the violation.

III. Restatement of Violation F

10 CFR part 34.33(c) requires, in part, that pocket dosimeters be checked, at periods not to exceed one year, for correct response to radiation.

Contrary to the above, a pocket dosimeter Serial No. 9062095 was not checked for proper radiation response from January 25, 1988 to January 17, 1990, and it was used on September 29, 1989. Similarly, pocket dosimeter Serial No. 7080642 was not checked for proper response to radiation from August 1988 to August 8, 1990 and this dosimeter was used on December 18, 1989.

This is a repeat violation.

Summary of Licensee's Response to Violation F.

The Licensee denies the example given in this violation concerning dosimeter Serial No. 7080642. The Licensee indicates that this pocket dosimeter was checked for proper radiation response but the information was not transferred to the dosimeter record book. To support its claim, the Licensee submitted the results of the dosimeter response check, which apparently was conducted on November 7, 1989. The Licensee provided no information to refute the other example given in this violation concerning pocket dosimeter Serial No. 9062095.

NRC's Evaluation of Licensee's Response to Violation F.

Based on the additional information and the record submitted by the licensee, NRC is withdrawing the example given in Violation F. concerning dosimeter Serial No. 7080642. Violation F. remains a violation, however, since the licensee provided no information to refute the example in Violation F. concerning dosimeter Serial No. 9062095.

IV. Summary of Licensee's Request for Remission of Civil Penalty

The Licensee has protested the \$10,000 civil penalty in whole and requested remission of the civil penalty. While the Licensee did not state its specific basis for requesting that remission, the licensee denies Violations C. and E., and one example of Violation F. In addition, the Licensee notes that Violation G. occurred because an employee directly disregarded the instructions of a supervisor and that the radiation overexposure in Violation A. may be a falsification. [Here, the Licensee apparently is expressing a theory that the involved employee may have deliberately exposed his personnel monitoring device, possible in order to receive time off from work.]

NRC Evaluation of Licensee's Request for Remission.

NRC's evaluation concerning the Licensee's denial of Violations C. and E. and one example of Violation F. is given above. While NRC is withdrawing Violation E. and one example of Violation F., the remaining violations continue to be indicative of a programmatic lack of control of licensed activities. Further, in responding to NRC's concern regarding the need for improved attention to detail and management oversight of licensed activities, the Licensee admits to a lack of management attention and involvement as the root cause of the violations.

The Licensee provided no evidence in support of its speculation that the radiation overexposure in Violation A. may have been a falsification. Concerning the Licensee's explanation that Violation G. occurred because a Licensee employee directly disregarded the instructions of a supervisor, NRC holds every licensee fully accountable for the acts of the licensee's employees and expects that licensees will provide sufficient management oversight of its employees to ensure that licensed activities are performed in accordance with regulatory requirements.

NRC Conclusion

Based on its evaluation of the licensee's response, the NRC staff concludes that six of the seven violations did occur, that one violation should be withdrawn, and that one example of one violation should be withdrawn. Reducing the amount of the proposed \$10,000 civil penalty by 1/7 due to the withdrawal of one violation results in an adjusted civil penalty of \$8571.43. The Licensee has provided no basis for any further remission. Accordingly, NRC concludes that a civil monetary penalty of \$8571.43 should be imposed by order.

[FR Doc. 91-11892 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-05985, License No. 37-00276-25; EA 90-112]

Professional Service Industries, Inc., Pittsburgh Testing Laboratories; Lombard, Illinois; Order Imposing a Civil Monetary Penalty

I

Professional Service Industries, Inc., (the "Licensee") is the holder of License No. 37-00276-25 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC"). The license authorizes the Licensee to possess and use byproduct material for the conduct of industrial radiography and related activities.

II

An NRC safety inspection of the Licensee's activities under the license was conducted at the Licensee's facility in Sharon Hill, Pennsylvania and at a temporary jobsite in Phoenixville, Pennsylvania on October 4, 1988. Subsequently, the NRC Office of Investigations performed an investigation of licensed activities. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full

compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 30, 1990. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations in Section I of the Notice. The Licensee responded to the Notice in two letters, both dated November 30, 1990, and in a supplemental letter dated February 6, 1991. In its responses, the Licensee acknowledges that the violations occurred but requests mitigation of the penalty based on its prompt and comprehensive corrective actions.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated but that the Licensee provided a sufficient basis for partial mitigation in the civil penalty amount for the violations designated in Section I of the Notice, and that a penalty in the amount of \$14,000 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR part 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of \$14,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days from the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event that the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of May 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix

Evaluation and Conclusion

On October 30, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Professional Service Industries, Inc., (Licensee) for violations identified during an NRC inspection and investigation. The Licensee responded to the Notice in two letters both dated November 30, 1990, and in a supplemental letter dated February 6, 1991. In its responses, the Licensee admitted that the violations occurred, but requested mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

1. Restatement of Violations Assessed a Civil Penalty

A. Condition 18 of License No. 37-00276-25 requires, in part, that the licensee shall conduct its program in accordance with statements, representations and procedures contained in a letter dated May 8, 1987. Item No. 4.2.2 of the enclosure to this letter requires that the Radiation Safety Officer or Assistant Radiation Safety Officer perform unannounced field audit inspections of each radiographer and radiographer's assistant at a minimum of once each calendar quarter, and document each inspection on the radiation safety inspection form (RR-19).

Contrary to the above,

1. Although eight "Internal Radiation Safety Performance Audit" (RR-19's) records existed for February 5, 1988, April 15, 1988, April 29, 1988, July 14, 1988 (2), January 13, 1989 and September

12, 1989 (2), documenting quarterly field audits of various radiographers, these field audits were never performed in that the Assistant Radiation Safety Officer (ARSO) either was not present at the radiography site at all, or was not present when radiography was being performed such that he could have performed the audits.

2. Although an "Internal Radiation Safety Performance Audit" (RR-19) record existed for May 3, 1989 which documented that a complete audit of a radiographer was performed by the ARSO, the ARSO admitted he did not actually enter the licensee's radiography cell where the radiography was being performed and thus, did not observe the radiographer perform the required surveys or lock the source. Therefore, a complete audit was not done.

B. 10 CFR part 34.31(a)(1) requires, in part, that the licensee shall not permit any individual to act as a radiographer until such individual has been instructed in the subjects outlined in appendix A of part 34. 10 CFR 34.31(c) requires, in part, that records of this training be maintained for three years.

Contrary to the above, although a Radiation Safety Training Record documented that a radiographer was instructed by the ARSO in the licensee's maintenance procedures on Sunday, October 2, 1988, no such training was given to the radiographer.

C. 10 CFR part 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required to be maintained by the Commission's regulations, orders, or license conditions be complete and accurate in all material respects.

1. Contrary to the above, information provided by the ARSO during an interview with an NRC investigator on January 3, 1990 was not accurate in certain material respects in that:

a. The ARSO, in response to questions concerning the conduct of the field audits of radiographer activities identified in Violation I.A. stated that he performed all of the questioned audits. This statement by the ARSO was not accurate in that the ARSO was either not present at the radiography site at all, or was not present when radiography was being performed such that he could have performed the audits on the documented dates; and

b. The ARSO, in response to questions regarding the conduct of training of a radiographer on October 2, 1988, stated that he had performed the training documented on the radiographer's training record. This statement was not accurate in that the radiographer did not work on October 2, 1988 and did not

receive the training as documented in his training file.

2. Contrary to the above, "Internal Radiation Safety Performance Audit" (RR-19's) records which were required to be maintained by License Condition 18 were not accurate in certain material respects in that:

a. Eight RR-19's dated February 5, 1988, April 15, 1988, April 29, 1988, July 14, 1988 (2), January 13, 1989 and September 12, 1989 (2), documenting quarterly field audits of various radiographers, were not accurate in that the field audits were never performed. The ARSO either was not present at the radiography site at all, or was not present when radiography was being performed such that he could have performed the audits.

b. A RR-19 dated May 3, 1989, which documented that a complete audit of a radiographer was performed by the ARSO, was not accurate in that the ARSO did not actually enter the licensee's radiography cell where the radiography was being performed and, thus, did not observe the radiographer perform the required surveys or lock the source. Therefore, a complete audit was not done.

These statements and representations were material because they directly related to compliance with NRC requirements and had the potential to affect the course of the NRC inspection and investigation of this matter.

These violations have been categorized in the aggregate as a Severity Level II problem. (Supplements VI and VII).

Cumulative Civil Penalty—\$16,000 (assessed equally among the four violations).

2. Summary of Licensee's Request for Mitigation

The Licensee, in its response, acknowledges the violations. However, the Licensee requests that the Civil penalty be mitigated because its corrective actions were prompt and comprehensive. Specifically, the Licensee asserts that, prior to the NRC investigation, its corporate oversight program identified that the Radiation Safety Officer (RSO) had authorized the Assistant Radiation Safety Officer (ARSO) to sign the RSO's name on the field audit forms, and recognized that this practice may have been construed as records falsification. In response to this determination, the Licensee asserts that it immediately instructed the ARSO to use his own signature on the audit forms.

The Licensee also asserts that, upon learning of the alleged violations, an investigation was immediately

conducted and the ARSO's authorization for all assigned responsibilities was suspended. Further, the Licensee states that the Sharon Hill office was instructed to continue radiographic operations for only current contractual obligations and not to pursue any new radiography jobs. The Licensee argues that this voluntary suspension of radiographic operations caused substantial monetary losses which should be considered in mitigating the civil penalty.

The Licensee also states, in its February 6, 1991 response, that it did not know what allegations were being investigated by the NRC until about December 1989 or January 1990. According to the Licensee, as soon as it knew the allegations, it initiated a review of procedures to determine whether deficiencies in procedures encouraged or permitted falsification of records. The Licensee notes that its review was not restricted to the records being questioned, but included all procedures applicable to radiation workers or Licensee management personnel. Further, the Licensee also revised its field audit and radiography corporate audit forms to require the signature of the radiographic personnel on the form to provide confirming evidence that the audit was performed, and to ensure and document a more thorough review of licensed operations by corporate auditors. The Licensee asserts that these changes were immediate and the new forms were implemented at all Licensee branch offices. The Licensee also states that all RSOs will be instructed regarding these issues of compliance, and that it will ensure that 10 CFR parts 30 and 34 and all license conditions will be complied with prior to reactivating radiographic operations at the Sharon Hill facility.

The Licensee concludes that these corrective actions were both prompt and comprehensive in that they were initiated immediately based upon NRC inquiries and the possibility of noncompliance, rather than on final NRC determinations or conclusions. Therefore, the Licensee requests that the civil penalty be mitigated.

NRC Evaluation of Licensee Response

The NRC has reconsidered the Licensee's corrective actions, as described in the Licensee's responses, including the suspension of the ARSO's authorization for assigned responsibilities; voluntary suspension of radiographic operations at the Sharon Hill office; review of all applicable procedures; revision and implementation of the radiographic corporate audit form; and planned

instruction to all RSOs concerning those issues of compliance. After reconsideration and further evaluation of these actions, the NRC agrees that the actions (as described in the Licensee's responses) that had been taken or planned at the time of the enforcement conference in August 1990 were extensive. Therefore, the NRC has determined that 25% mitigation of the civil penalty is warranted based on this factor. However, the NRC maintains that the corrective actions were not sufficiently prompt to warrant full 50% mitigation based on this factor.

The Licensee argues that it did not know what allegations were being investigated by NRC until December 1989 or January 1990 and that it did promptly initiate a review of its procedures as soon as the allegations became known. The Licensee concludes that its actions were prompt in that they were based on the possibility of noncompliance rather than final NRC conclusions. Notwithstanding the Licensee's contentions, the NRC had notified the Licensee's Corporate Radiation Safety Director on October 11, 1988 (one week after the conclusion of the inspection) that a discrepancy existed between a Licensee audit record and information furnished by the Philadelphia Naval Yard where radiography was allegedly performed on April 29, 1988. However, at the time, the Licensee did not promptly evaluate this issue in detail, and did not determine the extent of the corrective actions that were needed until after the Licensee became aware that an NRC investigation had been initiated.

In addition, the NRC recognizes that the Licensee's corporate oversight program identified that the ARSO at the Sharon Hill facility was improperly signing the RSO's signature on the audit forms. However, this was only identified after the ARSO raised the question to the corporate staff, and after the NRC inspection in October 1988 raised questions with respect to the performance of the radiography field audits. The Licensee's instruction to the ARSO at that time to cease this practice was appropriate; however, this action did not result in prompt evaluation, identification, and correction of the more significant issue, namely, that the reports were being created even though the audits were not being performed. These actions were not taken until 1990, after the majority of the OI investigation had been completed.

Furthermore, one of the stated actions in the Licensee's November 30 response was that all RSOs would be instructed regarding the issue of compliance with

regulatory requirements and license requirements. However, given the significance of this issue, the failure to instruct the RSOs sooner, particularly before the enforcement conference, cannot be viewed as a sufficiently prompt action that would warrant full mitigation of the civil penalty.

Based on the above, 25% mitigation of the base civil penalty amount is warranted because of the Licensee's corrective actions, and therefore, the base civil penalty amount of \$8,000 should be increased by 75%, rather than by 100% as originally proposed in the NRC's October 30, 1990 Notice.

NRC Conclusion

The NRC has concluded that the Licensee has provided a sufficient basis for partial mitigation of the civil penalty amount. Consequently, a civil penalty in the amount of \$14,000 should be imposed.

[FR Doc. 91-11691 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29188; International Series Release No. 270; File No. SR-NASD-91-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for a 6 Month Period

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, for Commission authorization to extend for a 6 month period the operation of its Pilot Program with the Stock Exchange of Singapore, Limited ("SES"). The Pilot Program currently consists of an interchange of

closing price and volume data on 25 NASDAQ securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. Hence, the end-of-day information being exchanged under the Pilot Program primarily assists the establishment of opening prices for the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD-SES Pilot Program for a two-year term¹ that was recently extended through May 12, 1991.² Commission approval of the instant filing would permit continuation of this Pilot Program through November 12, 1991. During this interval, 10 NASDAQ securities will be added, bringing the total included in the Pilot Program to 35.³ This figure equals the number of originally authorized at the inception of this program in 1988. Additionally, the SES will modify the information being transmitted to the NASD to reflect the SES's use of an order-driven trading system (known as the "CLOB").

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD-SES Pilot Program commenced operations with the

Commission's approval of File No. SR-NASD-87-40 on March 14, 1988. The principal features of this program were fully described in section 1 of that form 19b-4, which description is hereby incorporated by reference.⁴

The current authorization of the NASD-SES Pilot Program will expire on May 12, 1991. The NASD, on its own as well as the SES's behalf, hereby requests that the Commission approve a further extension of the Pilot Program for 6 months, the inclusion of 10 more NASDAQ stocks, and a technical modification in the data being transmitted by the SES to the NASD.

During the proposed extension, each market will continue to transmit to the other static price/volume information compiled at the end of each trading day on 35 NASDAQ securities. The NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price (for NASDAQ/NMS issues only) and the closing quote of every NASDAQ market maker in each of the 35 Pilot securities (collectively referred to as "NASD information"). In recognition of the SES's adoption of an order-driven system, the SES will transmit the following data elements for each Pilot security: closing price (*i.e.*, the price of the final transaction in the CLOB on that business day), the highest and lowest prices at which transactions were effected and the aggregate volume (collectively referred to as "SES information").⁵ The SES will no longer transmit quotation information because the CLOB has replaced the SES's original trading system that had been based upon competing market makers displaying continuous, two-sided quotations in Pilot securities.

The exchange of static, end-of-day information will remain the principal function of the Pilot Program for the duration of the proposed extension. SES information will continue to be provided only to subscribers of NASDAQ Level 2/3 services. Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's CLOB system. Finally, the original agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. This agreement, which provides for the sharing of regulatory information as

¹ See Release No. 34-25457 (March 14, 1988), 53 FR 9156 (March 21, 1988).

² See Release No. 34-28609 (November 9, 1990), 55 FR 48194 (November 19, 1990), approving File No. SR-NASD-90-55 that authorized the Pilot Program's operation through May 12, 1991.

³ The NASDDAQ issues being added are the following: Aldus Corp., Cetus Corp., Collagen Corp., Mentor Graphics, Miller (Herman), RPM, Inc., SEI Corp., United Artists Entertainment (Class A and B), and Washington Energy.

⁴ See also Release No. 34-25065 (October 28, 1987), 52 FR 42167 (November 3, 1987).

⁵ If no trades are effected in a Pilot security on a given day, the SES will transmit no data on that issue even if bids or offers had been entered into the CLOB for possible execution.

needed, is believed by the NASD to be adequate given the limited nature and limited scope of the Pilot Program.

Finally, the NASD acknowledges that any further enhancement to the Pilot Program, including the introduction of automated order routing and execution facilities would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement is planned for implementation during the 6 month extension.

Regarding the statutory basis for the extended Pilot Program, the NASD relies on sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) of the Act. Subsections (B) and (C), of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the executions of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *". Finally, section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extend Pilot Program will permit the continued exchange of static market data on a limited group of NASDAQ securities between the NASD and SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operation of the present

Pilot Program poses any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find, pursuant to section 19(a)(2) of the Act, good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing and, in any event, by May 13, 1991. The NASD believes that accelerated approval is appropriate for the following reasons: (1) The experimental character of the Pilot Program and the need to maintain continuity in its operation; (2) the commitment not to make any significant operational changes during the requested extension absent Commission approval; (3) the limited nature of the Pilot Program, both in terms of the number of Pilot securities and the amount of market information being exchanged; and (4) the limited utility of end-of-day, static information to the NASD and SES member firms capable of accessing, respectively SES and NASD information. Moreover, during the period of the proposed extension, the sponsoring markets remain committed to exchange regulatory information whenever the need arises. Finally, if accelerated approval is not granted, the sponsors will be obliged to terminate this experimental program before its potential benefits can be realized in relation to globalization of securities markets. Accordingly, the NASD believes ample basis exist for granting accelerated approval pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the executions of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires

that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *". Section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to maintain continuity in the Pilot Program and to allow the sponsors to assess the impact of the modification to SES information and the addition of 10 NASDAQ issues to the group of Pilot securities. The brief extension being approved should allow sufficient time for the NASD to prepare another rule 19b-4 filing regarding this program, which filing will incorporate certain additional information germane to the Commission's deliberations on permanent approval of the linkage.⁶ Further, the Commission acknowledges the limited nature of the Pilot Program and that no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

⁶ Earlier this year the NASD submitted a response to a request from the Commission staff regarding regulatory procedures covering the Pilot Program, including the sharing of information for regulatory purposes. See letter dated February 12, 1991 from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Kathryn V. Natale, Assistant Director, Esq., Division of Market Regulation, Securities and Exchange Commission. That letter is hereby incorporated by reference.

Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer File Number SR-NASD-91-22 and should be submitted by June 7, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that SR-NASD-91-22 be, and hereby is approved for a period of 6 months, allowing the NASD-SES Pilot Program to continue through November 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 10, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-11772 Filed 5-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18143; File No. 811-2761]

SBL Variable Annuity Account II

May 13, 1991

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: SBL Variable Annuity Account II.

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 4, 1990 and amended on April 19, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by 5:30 p.m. on June 7, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Security Benefit Life Insurance

Company, 700 Harrison, Topeka, Kansas 66636.

FOR FURTHER INFORMATION CONTACT:

Joyce M. Pickholz, Attorney, at (202) 272-3046 or Barry D. Miller, Senior Attorney, at (202) 272-3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant was established as a separate account of Security Benefit Life Insurance Company on August 2, 1977 and it continues to exist under the laws of Kansas. Applicant is registered under the 1940 Act as a unit investment trust. On August 25, 1977, the Applicant filed a registration statement under the Investment Company Act of 1940 and under the Securities Act of 1933 registering certain variable annuity contracts. The registration statement was declared effective on February 6, 1979 and the public offering of Applicant's contracts commenced on the same date.

2. Applicant made no distribution to securityholders in connection with the winding-up of its affairs because all contracts issued by Applicant were liquidated in the ordinary course of business. Applicant issued a very limited number of contracts during its existence. Applicant had only 11 contracts outstanding at the end of 1981 and 2 contracts at the end of 1986. The last contract was liquidated in June 1987.

3. The Applicant has no securityholders. Applicant has retained no assets and has no debts or liabilities which remain outstanding.

4. The Applicant is not a party to any litigation or administrative proceeding.

5. The Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-11773 Filed 5-16-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB).

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: 1991 New Homes Survey.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1000.

Estimated Total Annual Burden Hours: 250.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: The New Homes Survey will obtain information on space heating, appliance saturations, and living quarter characteristics for single-family dwellings and condominiums constructed in 1990 and 1991. This information is required by several different organizations within TVA for

program design and evaluation and for power system load forecasting.

Louis S. Grande,

Vice President, Information Services Senior Agency Official.

[FR Doc. 91-11704 Filed 5-16-91; 8:45 am]

BILLING CODE 8120-08-M

Privacy Act of 1974; Proposed New Routine Use

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine use for TVA-2, "Personnel Files—TVA" and TVA-11, "Payroll Records—TVA."

SUMMARY: As required by the Privacy Act, TVA gave notice (56 FR 11299-300, March 15, 1991) of its intention to establish new routine uses for the systems of records entitled TVA-2 "Personnel Files—TVA" and TVA-11 "Payroll Records—TVA." No comments from the public were received. The new routine uses as published on March 15, 1991, and as described below will therefore become a part of TVA-2 and TVA-11. The full text of TVA-2 appears at 55 FR 34817-18, August 24, 1990, and 56 FR 19137, April 25, 1991. The full text of TVA-11 appears at 55 FR 34824-26, August 24, 1990.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, Privacy Act Officer, TVA, 615-751-2520.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

TVA-11

SYSTEM NAME:

Payroll Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-11703 Filed 5-16-91; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on May 10, 1991

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on May 10, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office

Building, room 3228, Washington, DC 20503 (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the *Federal Register*, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on May 10, 1991.

DOT No.: 3493.

OMB No.: New.

Administration: Federal Railroad Administration.

Title: Railroad User Fees.

Need for Information: To determine a railroad's equitable share of the total industry user fee.

Proposed Use of Information: To assure that each railroad is assessed their fair share of the industry-wide user fee.

Frequency: Annually and recordkeeping.

Burden Estimate: 2,204 hours.

Respondents: 586 Railroads.

Form(s): FRA-F-6180.89.

Average Burden Hours Per Response: 3.76 hours.

DOT No.: 3494.

OMB No.: 2130-0004.

Administration: Federal Railroad Administration.

Title: Railroad Locomotive Safety Standards.

Need for Information: To provide a written record that a locomotive has been inspected and is in proper condition for service.

Proposed Use of Information: This information is utilized to assure and promote safe and suitable locomotives and as the written record in post-accident investigations.

Frequency: Recordkeeping and On Occasion.

Burden Estimate: 1,114,160 hours.

Respondents: 500 Railroads.

Form(s): FRA-F-6180.449A.

Average Burden Hours Per Response: 2,228.34 hours.

DOT No: 3495.

OMB No: 2133-0517.

Administration: Maritime Administration.

Title: Approval of Underwriters for Marine Hull Insurance.

Need for Information: Required to obtain or retain a benefit.

Proposed Use of Information: To assure applicant qualifies for requested benefit under the statute.

Frequency: Annually.

Burden Estimate: 66 hours.

Respondents: 1 hour.

Form(s): None.

Average Burden Hours Per Respondent: 1.

DOT No: 3496.

OMB No: 2133-0511.

Administration: Maritime Administration.

Title: Eusclparent Company.

Need for Information: To verify information on vessels that could be vital in a national or international emergency.

Proposed Use of Information: To perform contingency planning for sealift mobilization requirements.

Frequency: Annually.

Burden Estimate: 48.

Respondents: 100.

Form(s): None.

Average Burden Hours Per Response: 28½ minutes.

DOT No: 3497.

OMB No: 2105-0510.

Administration: Office of the Secretary.
Title: Report of DBE Awards and Commitments.

Need for Information: To determine extent to which DOT recipients are meeting their approved goals.

Proposed Use of Information: To report to Congress on DOT's success in meeting its statutory DBE program requirements.

Frequency: Annually/semi-annually/quarterly.

Burden Estimate: 21,276 hours.

Respondents: Recipients of DOT financial assistance funds.

Form(s): 1.

Average Burden Hours Per Respondent: 11 hours and 36 minutes.

DOT No: 3498.

OMB No: 2130-0509.

Administration: Federal Railroad Administration.

Title: State Safety Participation Regulations.

Need for Information: To assure compliance with Federal safety laws and regulations and to aid in claims collection proceedings against violating carriers.

Proposed Use of Information: To administer and monitor State participation in investigative and surveillance activities under Federal safety laws and regulations.

Frequency: Annually, Monthly, Semi-Annually, On Occasion.

Burden Estimate: 12,045 hours.

Respondents: 33 States.

Form(s): FRA-F-6180.5; 5A; 10; 29; 29A; 33; 53; 58A; 59; 59A; 65; 65A; 67; 68; 68A; 69; and, FRA-F-74.

Average Burden Hours Per Response: 365 hours.

DOT No: 3499.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Proposed part 161—Notice and Approval of Airport Noise and Access Restrictions.

Need for Information: The information, e.g., notice requirement and analysis of the proposed restriction, is required by the Act.

Proposed Use of Information: This information is necessary to comprehend and evaluate the restriction and, in the case of restrictions on Stage 3 aircraft operations, will be useful to the FAA in determining whether the restriction should be approved or disapproved in accordance with the conditions of approval defined in the Act.

Frequency: On Occasion.

Burden Estimate: 37,400 hours.

Respondents: Airport operators and air carriers.

Form(s): None.

Average Burden Hours Per Respondent: 3,400 hours.

DOT No.: 3500.

OMB No.: New.

Administration: U.S. Coast Guard.

Title: U.S. Recreational Vessel Fee (RVF)—Decal Request.

Need for Information: This reporting and information collection requirement is needed to require recreational boaters to share in the cost of Coast Guard

programs from which they benefit. This requirement is consistent with the Omnibus Budget Reconciliation Act of 1990, 46 U.S.C. 2110.

Proposed Use of Information: A Federally-contracted financial institution will receive the fee payment and information at a post office box and notify a Federally-contracted decal distributor to issue the appropriate number and type of decals.

Frequency: Annually through 1995.

Burden Estimate: 4,100,000 hours.

Respondents: Owners of recreational vessels greater than 16 feet in length.

Form(s): None.

Average Burden Hours Per Respondent: 6 minutes.

DOT No.: 3501.

OMB No.: New.

Administration: Federal Aviation Administration.

Title: Passenger Facility Charge Program.

Need for Information: The information is needed by public agencies and air carriers to determine additional funding for the expansion of airport capacity.

Proposed Use of Information: The FAA will use any information submitted in response to this program to carry out the intent of section 9110 of the Aviation Safety and Capacity Expansion Act of 1990.

Frequency: Quarterly and Annually.

Burden Estimate: 50,942 hours.

Respondents: Air carriers and public agencies.

Form(s): None.

Average Burden Hours Per Respondent: 16 hours for air carriers' reporting burden, 35.5 hours for public agencies' reporting burden, 20 hours for air carriers' recordkeeping burden, and 20 hours for public agencies' recordkeeping burden.

The Procedures and Evidence Rules for Air Carrier Authority Applications (DOT No. 3492/OMB No. 2106-0023) published April 25, 1991, on page 19141 of the Federal Register has been withdrawn. It will be resubmitted at a later date.

Issued in Washington, DC on May 10, 1991.

Richard B. Chapman,

Acting Director of Information Resource Management.

[FR Doc. 91-11728 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-52-M

Advisory Commission on Conferences in Ocean Shipping; Open Meeting

AGENCY: Department of Transportation (DOT) Office of the Secretary.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding its first field hearing in New Orleans, LA on June 3, 1991; the hearing will be open to the public. In the morning, The Commission plans to focus on issues related to antitrust immunity for activities of conferences and others in the ocean shipping industry. In the afternoon, the Commission plans to hear testimony on all issues relating to the Shipping Act of 1984 and conferences in the ocean shipping industry.

DATES: Public hearing: Monday, June 3, 1991, 9:30 a.m. to 4:30 p.m. CDT.

Deadline for requests to speak at the public hearing: Thursday, May 27, 1991.

ADDRESSES: The address for the public hearing is Board Room, suite 2900, World Trade Center, No. 2 Canal Street, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Ruth Dicker, Counsel, or Sandra Kusumoto, Senior Economist, Advisory Commission on Conferences in Ocean Shipping, Department of Transportation, 400 Seventh Street, SW., room 5102, Washington, DC 20590; telephone (202) 366-9781; FAX (202) 366-7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. The Commission began formal operations on April 10, 1991, at a day-long open meeting in Washington, DC, at which the Commission heard reports from Federal agencies on the impact of the 1984 Act and discussed issues to be studied by the Commission.

As part of its study, the Commission will be holding a series of public hearings around the United States. Places tentatively selected for hearings, in addition to New Orleans, are San Francisco, CA; Charleston, SC; Portland, OR; and New York, NY. At each hearing, a part of the day will be dedicated to issues generally raised by the 1984 Act, and part of each hearing will focus on a specific pre-designated issue.

The Commission will be holding its first field hearing on June 13, 1991. Attendance is open to the public but limited to space available. The morning session will be devoted to testimony on issues related to antitrust immunity for activities of conferences and others in the ocean shipping industry. (At a subsequent public hearing, the Commission will devote another session to this topic.) The afternoon session will be open to receive testimony on any aspect of the Shipping Act of 1984. Portions of this meeting may be used to discuss other matters of interest to the Commission.

Interested members of the public are invited to address the Commission at the June 3, 1991 hearing. In order to be assured of an opportunity to do so, each person wishing to speak should notify either Ruth Dicker or Sandra Kusumoto, at the address set out above, by May 27, 1991. Each such person is also requested to provide by May 27, 1991 a brief summary of the matters he/she expects to address at the Commission hearing. Should such person wish to submit a copy of his/her complete statement to be delivered at the Commission hearing, he/she may do so as well. Persons appearing before the Commission are encouraged to support all opinions with factual information and evidence. To the extent that time permits and that it does not disrupt the orderly process of the meeting and will not be unfair to any person, persons who do not make prior written requests to speak will be given opportunity to do so as part of the afternoon session.

Persons who wish to provide written comments for the Commission's consideration may do so at any time by forwarding them to the address set out above.

Issued in Washington, DC on May 13, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91-11729 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ended May 10, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47532

Date filed: May 8, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 487 (Japan-Korea Fares) R-1—R-8.

Proposed Effective Date: May 27, 1991.

Docket Number: 47536

Date filed: May 10, 1991.

Parties: Members of the International Air Transport Association.

Subject: TC31 Reso/C 0216 dated April 19, 1991.

Expedited Japan-USA/US Territories R-1.

TC31 Reso/C 0217 dated April 19, 1991.

Expedited South Pacific (To/From USA/US Territories) R-2.

Proposed Effective Date: June 1, 1991.

Docket Number: 47537

Date filed: May 10, 1991.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/C 0885 dated April 29, 1991.

Mid Atlantic Expedited Resolutions R-1 to R-4.

Proposed Effective Date: August 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-11725 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended May 10, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47530

Date filed: May 8, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1991.

Description: Application of Jes Air Ltd. pursuant to section 402 of the Act and subpart Q of the Regulations, requests a Foreign Air Carrier Permit to operate scheduled services between the Republic of Bulgaria and The United States of America.

Docket Number: 45723

Date filed: May 7, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 4, 1991.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations applies for amendment of its Foreign Air Carrier Permit to the extent necessary to permit TAESA to engage in the scheduled air transportation of persons, property and mail between Saltillo (Ramos Arizpe), Mexico, on the one hand, and San Antonio, Texas, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-11726 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 90-11-29, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period beginning April 1, 1991, we have projected non-fuel costs based on the year ended December 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect the intense fluctuations in fuel prices and costs induced by the recent Mid East crisis.

By Order 91-5-9 cargo rates may be adjusted by the following adjustment factors over the October 1979 level:

Atlantic—1.5638

Western Hemisphere—1.3174

Pacific—1.8111

FOR FURTHER INFORMATION CONTACT:
Keith A. Shangraw (202) 366-2439.

By the Department of Transportation,
Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-11727 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[Docket No. RSAD-91-3]

Proposed Test Program to Evaluate Random Drug Testing Rate

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed test program.

SUMMARY: FRA proposes to implement an experimental program designed to evaluate the extent to which the rate of random drug testing affects general deterrence. FRA proposes to grant conditional waivers to three Class I freight railroads and one commuter railroad. The railroads selected would be allowed to test at a 25 percent rate for a period of one year, rather than 50 percent. FRA proposes to select three additional Class I freight railroads and one additional commuter railroad as a control group; these railroads would continue their testing rates at the 50 percent rate required by FRA's alcohol and drug regulation. FRA expects that this test program will provide data to help it determine whether the drug testing rate (the number of specimens collected as a percentage of the covered population) significantly influences the percentage of employees testing positive for prohibited use of one or more controlled substances. This information may support future rulemaking activity.

DATES: (1) Any request to make oral presentations should be received by June 6, 1991.

(2) Written comments should be received by June 17, 1991. Late filed comments will be considered to the extent practicable.

(3) FRA proposes to make the final order effective on July 1, 1991.

ADDRESSES: Comments shall be sent to Docket Clerk, Docket No. RSAD-91-3, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., room 8201, Washington, DC 20590. Persons wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSAD-91-3." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons, between 8:30 a.m. and 6 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
James T. Schultz, Railroad Safety

Specialist—Operating Practices (RRS-12), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366-0508) or Patricia V. Sun, Trial Attorney (RCC-30), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 366-4002).

SUPPLEMENTARY INFORMATION:**Background**

In February of 1991, the Association of American Railroads (AAR) filed a petition in accordance with 49 CFR 211.51, requesting that FRA implement a test program that would temporarily suspend compliance with 49 CFR 219.601(b)(2)(ii). This section, first published on November 21, 1988 (53 FR 47103), requires each railroad, in the second year of that railroad's random testing program, to conduct a sufficient number of random tests during the year to equal at least 50 percent of the number of its covered service employees. (Subsequent amendments to the alcohol and drug regulations, which did not affect § 219.601(b)(2)(ii), were published on December 27, 1989 (54 FR 53238) and June 4, 1990 (55 FR 22791)). The proposed test program would permit an experimental group of railroads to test at a 25 percent rate for one year, for comparison against a group of control railroads that would continue to test at a 50 percent rate. Data from the two groups of railroads would then be analyzed to determine the effect of different testing rates on deterrence.

FRA agrees with the AAR that an experimental program would be useful at this time. FRA included the possibility of adjusting the random testing level when it promulgated the random program in 1988 (53 FR 47113). A test program would allow FRA to study whether the 50 percent testing rate is necessary, when the overall positive rates for random, post-accident and reasonable cause testing show a low or rapidly declining rate of positive test results.

Random testing, conducted at the 25 percent rate in its first year of implementation (for most railroads), yielded an overall positive rate of 1.04 percent based on 35,000 tests reported by the railroads in their annual reports on testing activity. Post-accident and reasonable cause testing had their lowest positive rates in five years, with post-accident positives declining from 6.0 percent in 1981 to 3.2 percent in 1990, and with reasonable cause positives declining from 5.4 percent in 1987 to 2.2 percent in 1990.

The Proposed Order

FRA proposes to select three major Class I freight railroads and one commuter railroad for this experimental program. Railroads will be chosen to provide both a large sample size and significant geographic coverage. A railroad that tested at 50 percent in 1990 will be included to allow FRA to measure the effect of reducing a railroad's testing rate from 50 percent to 25 percent.

A control group, also comprised of three major Class I railroads and one metropolitan area commuter railroad, will continue to test at 50 percent. The experiment's design would attempt to balance such factors as active peer intervention programs, extent of for-cause testing programs, and extent of testing in medical programs.

Before the program begins, FRA would require the participating railroads to subscribe to a protocol stating conditions for participation. FRA would inspect pertinent records in advance of program start-up, to ensure that criteria for test result review are uniform for all participants. Care would be taken to identify and if possible control intervening variables.

Railroads would be required to submit quarterly test data reports, retroactive to January 1, 1991, and continuing through the period of the experiment, to permit trend line analysis and enable FRA to respond quickly, if necessary, to any unexpectedly significant changes in drug use during the program. FRA would reserve the right to terminate or modify the test program on 10 days notice if any party fails to comply with the conditions mentioned or any others specified in the protocol, or if quarterly reports indicate a particularly serious degrading of performance by one or more of the experimental railroads (as reflected by the random testing positive rate and/or other information available to FRA). FRA would also reserve the right to terminate if FRA review of railroad alcohol/drug program administration indicates material deficiencies.

FRA anticipates that this experiment would commence on July 1, 1991, and continue for at least four calendar quarters. At the conclusion of the program, FRA will review pertinent records for the test year and interview program managers and selected labor representatives.

Authority: 45 U.S.C. 431(c), 437; 49 CFR 1.49(m), 211.43, 211.51.

Issued in Washington, DC on May 13, 1991.
Grady C. Cothen, Jr.,
Associate Administrator for Safety.
[FR Doc. 91-11724 Filed 5-16-91; 8:45 am]
BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 10, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0108.

Form Number: 1096.

Type of Review: Extension.

Title: Annual Summary and Transmittal of U.S. Information Returns.

Description: Form 1096 is used to transmit information returns (Forms 1098, 5498, and W-2G) to the IRS Service Center. Under Internal Revenue Code section 6041 and related sections, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize and categorize the transmittal forms.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 4,260,895.

Estimated Burden Hours Per Response: 11 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,026,240 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and

Budget, room 3001, New Executive Office Building, Washington DC 20503.
Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91-11712 Filed 5-16-91; 8:45 am]
BILLING CODE 4830-01-M

Office of Thrift Supervision

Sentry Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Sentry Federal Savings Association, Norfolk, Virginia, on May 3, 1991.

By the Office of Thrift Supervision.

Dated: May 10, 1991.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-11761 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank of Annapolis; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Bank of Annapolis, Annapolis, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 3, 1991.

Dated: May 10, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-11762 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-20: OTS No. 3189]

Cragin Federal Bank For Savings, Chicago, Illinois 60639; Final Action; Approval of Conversion Application

Notice is hereby given that on April 22, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Cragin Federal Bank For Savings, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the

application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Chicago, 11 East Wacker Drive, Chicago, Illinois 60601.

Dated: May 10, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-11759 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-19; OTS No. 2693]

**First Kentucky Federal Savings Bank,
Central City, Kentucky; Final Action;
Approval of Conversion Application.**

Notice is hereby given that on April 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Kentucky Savings Bank, Central City, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for

inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Cincinnati, 525 Vine Street, suite 700, Cincinnati, Ohio 45202.

By the Office of Thrift Supervision.

Dated: May 10, 1991.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-11760 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 96

Friday, May 17, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, May 21, 1991, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Rulemaking Petition for Policy Regarding State and Local Property Taxes.

Memorandum and resolution re: Joint Notice of Proposed Rulemaking pursuant to section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires that the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration develop a set of uniform rules and procedures for administrative hearings.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 14, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-11867 Filed 5-15-91; 1:11 p.m.]

BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, May 21, 1991, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Application for Federal deposit insurance:

American Federal Savings Bank of Henry County, a proposed new Federal savings bank to be located at 1090 Hudson Bridge Road, Stockbridge, Georgia.

Application for Consent to Merge and Establish Twenty Branches:

Equibank, Pittsburgh, Pennsylvania, an insured State nonmember bank, for the Corporation's consent to merge, under its charter and title, with Liberty Savings Bank, Philadelphia, Pennsylvania, and for consent to establish the twenty branches of Liberty Savings Bank as branches of Equibank.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 14, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-11868 Filed 5-15-91; 1:11 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION:

"FEDERAL REGISTER" NUMBER: 91-10545.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 9, 1990, 10:00 a.m.

The following item was continued to the meeting of May 16, 1991:

Presidential primary and general election regulations: Final rules and explanation and justification.

DATE AND TIME: Tuesday, May 21, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 23, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Advisory Opinion 1991-12: Perkins Coie on behalf of Schroeder Fund for the Future
1988 Presidential Audits—Status Report
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer,
Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant,

Office of the Secretariat.

[FR Doc. 91-11851 Filed 5-15-91; 11:22 am]

BILLING CODE 6715-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-11851

PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, May 23, 1991, 10:00 a.m.

This meeting will be open to the public.

The following item was added to the agenda pursuant to 11 CFR § 2.7(d).

Gephardt for President Committee, Inc.—
Final Audit Report.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer,
Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-11914 Filed 5-15-91; 2:35 pm]

BILLING CODE 6715-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, June 5, 1991.

PLACE: Board Room 9th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of May, 1991.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. William A. Gill, Jr.,
Executive Director, Tel: (202) 523-5920.

Date of Notice: May 14, 1991.

William A. Gill, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 91-11908 Filed 5-15-91; 2:25 pm]

BILLING CODE 7550-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:37 p.m. on Tuesday, May 14, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) Preemption of state law, (2) the resolution of failed thrift institutions, (3) sale of assets, and (4) contracting activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the board room of the Federal Deposit Insurance Corporation building located at 550-17th Street, NW., Washington, DC.

Dated: May 15, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91-11921 Filed 5-15-91; 3:25 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 56, No. 96

Friday, May 17, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0361]

Indirect Food Additives: Polymers

Correction

In rule document 91-8919 beginning on page 15275, in the issue of Tuesday, April 16, 1991, make the following correction:

On page 15276, in the first column, in the first full paragraph, in the seventh line, "either" should read "ether".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. R-91-1538; FR-2942-I-02]

24 CFR Part 3500

Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans, (Regulation X)

Correction

In rule document 91-10005 beginning on page 19506 in the issue of Friday,

April 26, 1991, make the following corrections:

§ 3500.21 [Corrected]

1. On page 19508, in the third column, in § 3500.21(b)(2), in the third line from the bottom, "normal" should read "nominal".

2. On page 19509, in the second column, in § 3500.21(e)(1)(i), in the third line from the bottom, "of" should read "if".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 90-ACE-18]

Designation of Transition Area; Monett, MO

Correction

In rule document 91-9919 beginning on page 19256, in the issue of Friday, April 26, 1991, make the following correction:

§ 71.181 [Corrected]

On page 19257, in the second column, in § 71.181, under **Monett, Missouri** [Revised], in the fourth line, "long 90°" should read "long 94°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-2]

Proposed Transition Area Establishment; Sault Ste Marie Marie Municipal/Sanderson Field Airport

Correction

In the issue of Wednesday, March 27, 1991, on page 12816, appearing in the third column, in the correction to proposed rule document 91-3829, a portion of the text is inaccurate and is corrected as follows:

In the same column, in § 71.181, in the fourth line "lat. 46° 46' N." should read "46° 28' 46" N."

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF04

Death Pension Eligibility—Wartime Service

Correction

In rule document 91-10036 beginning on page 19578, in the issue of Monday, April 29, 1991, make the following correction:

§ 3.3 [Corrected]

On page 19579, in the second column, in § 3.3(b)(3)(ii), in the second line, "receiver" should read "receive".

BILLING CODE 1505-01-D

Federal Register

**Friday
May 17, 1991**

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 86

**Requirements Governing the Lobbying of
HUD Personnel; Section 112 of the
Reform Act; Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 86

[Docket No. R-91-1481; FR-2732-F-02]

RIN No. 2501-AA93

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes the standards under which:

- Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and
- Persons that are retained to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

It also places limitations on the fees that may be paid to consultants who are engaged to influence the award or allocation of the Department's financial assistance.

The rule is designed to improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence.

EFFECTIVE DATE: June 17, 1991. However, no sanctions or penalties, under this rule or otherwise, may be imposed by the Department for any failure to meet the requirements of this rule during the period ending August 14, 1991. This rule applies to:

- All *agreements to make an expenditure* that are entered into on or after the effective date of this rule;
- All *expenditures made pursuant to an agreement to make an expenditure* that is entered into on or after the effective date of this rule; and
- All *expenditures made on or after the effective date of this rule, where the expenditure is not made pursuant to an agreement.*

FOR FURTHER INFORMATION CONTACT:

Arnold J. Haiman, Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC

20410. Telephone: (202) 708-3815; TDD: (202) 708-1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the *Federal Register*.

I. Statutory Background

This rule implements section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, approved December 15, 1989, (the "Reform Act"). Section 112 added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.* (the "HUD Act").

The new provision contains two principal features. The first establishes the standards under which:

- Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and
- Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

The second feature imposes limitations on the fees that may be paid to consultants who are engaged to influence the award or allocation of the Department's financial assistance.

It should be noted that section 13 contains procedural requirements only. It neither expands nor limits the circumstances in which communications designed to influence the Department's decisions may be made.

1. *Influencing the Award of Financial Assistance and Management Actions.* Section 13 deals with the two players that are typically involved in efforts to influence the Department with respect to the award of financial assistance or the taking of management actions: those who *obtain the services of another* for this purpose and those who *provide the*

services. Specific features include the following:

a. *Those who make the expenditures.* Section 13 requires those who make an expenditure to influence a departmental decision to keep records on the expenditure, and to report it to HUD. Two exceptions to the reporting requirements are provided: expenditures for reasonable compensation paid to regularly employed personnel, and expenditures that total less than \$10,000 for a reporting year. The provision also contains an exception for expenditures incurred in complying with conditions, requirements, or procedures imposed by the Department.

b. *Those who provide the influence.* Section 13 requires each person retained to influence the Department with regard to any financial assistance or management action to register with the Department and to report to HUD on the activities involved. Reporting is not required if the total of the expenditures received by a person from all sources for HUD lobbying services in the reporting year is less than \$10,000.

c. *Civil money penalties.* Section 13 authorizes the imposition of civil money penalties on any person who knowingly fails to comply with the provision's reporting and registration requirements. The penalty is the greater of \$10,000 or the total amount received by a person for any lobbying service to which the failure to report or register relates.

2. *Limitations on Consulting Fees.* Section 13 contains two limitations on the fees that may be paid to consultants engaged to influence the award or allocation of the Department's financial assistance. It prohibits any fee that is tied to the amount of assistance, or to the number of housing units involved in the request for assistance. It also prohibits any fee that is contingent on an award of assistance, except where:

- The lobbying services are provided to a nonprofit applicant, and
- All or part of the professional service provided with respect to the project are donated to the nonprofit if the assistance is not received.

II. Summary of Public Comments and HUD Responses

A proposed rule to implement section 13 of the HUD Act was published on June 1, 1990, at 55 FR 22722. The rule gave the public 60 days in which to submit comments. Thirty-nine comments were received, and many of the comments were extensive. The following types and numbers of commenters were represented: 17 law firms, 11 national associations, six

consulting firms, three State associations, and two municipal associations. Below is a listing of the comments. A response from the Department follows each comment.

A. General Comments

1. *Comment.* The proposed rule is unduly burdensome in its record-keeping requirements. The rule imposes retention requirements that go beyond the requirements of the statute. For example, there is no intention on the part of the Congress to require the retention of records if no report is required.

(one consultant and three law firms)

Response. The requirement to retain records is independent of the requirement to report, and both requirements are clearly statutory. Section 13(a)(3) of the HUD Act states—

each person making an expenditure shall obtain a bill, stating the particulars, for every such expenditure, and shall retain all records required * * * for not less than the 2-year period beginning on the date of the filing of the report required * * *.

The reporting requirement comes from section 13(b)(1), which states—

each person making an expenditure * * * shall file with the Secretary, between the 1st and 10th day of each calendar year, a report specifying the total expenditures made by or on behalf of such person during the year * * *.

The Department believes that the section 13(a)(3) language requires the retention of the records for two years, irrespective of whether the person is required to file a report on the underlying agreements and expenditures.

2. *Comment.* The record-keeping requirement requires each person subject to it to keep a detailed record of the name and address of every person with whom a covered agreement is made. This requirement is onerous and represents overkill.

For example, if a person engages a law firm to provide general representation under a flat fee arrangement, and the firm engages others to represent it in influencing HUD decisions, the firm's client is covered, and the client may not even be aware that its counsel has engaged others to influence HUD on its behalf. The law firm might not want to reveal to its client that it felt it necessary to go beyond its own resources to accomplish the client's mission. Furthermore, requiring the client to keep records and report requires the law firm to reveal internal operating procedures that it might well want to keep confidential.

(one consultant and three law firms)

Response. The general rule is that only parties to the agreement regarding influencing activities are required to keep records and report on expenditures made and received as a result of the agreement. Therefore, the commenters appear to be unduly apprehensive about the reach of this requirement.

In the example presented, the rule imposes the following responsibilities:

- The client engaging the law firm must keep records, and may have to report,¹ on those amounts of monies or other things of value paid to the law firm for influencing activities.
- The law firm must register with HUD within 14 days of being retained, and may have to report² on monies or other things of value received and expended for influencing activities.
- If the law firm "subcontracts" influencing responsibilities to others, a new expenditure/retainer relationship is created. The law firm moves to the "expenditure" side of the new relationship, and must keep records, and report (if appropriate), on its expenditures to the "subcontractor."
- The "subcontractor" must register with HUD within 14 days of being retained by the law firm, and may have to report on monies or other things of value received and expended for influencing activities on the firm's behalf.³

The commenters are concerned that the client may discover that the firm has hired someone else to carry out the influencing activities. Neither the statute nor the rule requires the firm to report to the client the details of carrying out the client's mission, but the rule's "sunshine" provisions may lead to such a discovery.

Among other things, the firm—as the "expenditure maker"—must (if required) report on all expenditures and agreements made, and provide the name and address of each person to whom an agreement or an expenditure is made. In turn, the registration of the "subcontractor" must identify the name and address of the registrant's employer and "of any person in whose interest the registrant appears or works."

The statute specifies that this report must constitute part of the public records of the Department, must be open to public inspection, and must be published in the *Federal Register* annually. In addition, registration

¹ As discussed later, the reporting requirement is subject to a \$10,000 annual threshold.

² Same as the preceding footnote.

³ Same as the preceding footnote.

information is also subject to *Federal Register* publication. Therefore, while not required by the statute, it is possible that the original client will learn of the law firm's "subcontract."

On a related point, the final rule expands the registration information that is subject to *Federal Register* publication. Section 13(c)(3) states:

The Secretary shall compile all registration information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it annually as a notice in the *Federal Register*.

The proposed rule limited the coverage of this provision to information required on the registration form; it did not reach information contained in the registrant's report.

The Department believes that the proposed rule's approach is incorrect. Section 13(c)(3) calls for publication of "all registration information." The caption of section 13(c)(3) is "PUBLICATION OF INFORMATION." The caption of section 13(c)(1)—the substantive registration provision—is "REQUIREMENT AND INFORMATION." The provision contains both information required on the registration form and report information. In light of this language, the Department believes that the statute's reference to "all registration information" clearly means information from both sources.

In addition, section 13(b)(5) uses almost identical language in requiring *Federal Register* publication of reports on expenditures. This lends further support to the Department's position that registrant reports were also intended to be covered.

Also, in order to effectuate the overall purpose of the statute to bring into the "sunshine" all significant activities associated with influencing departmental decisions, the Department believes that it is necessary to publish the report of the registrant.

Section 86.30(b) of the final rule has been amended to require the annual *Federal Register* publication of both information submitted in connection with registration and the reports submitted by registrants.

3. *Comment.* The rule requires the client to comply with record keeping and reporting requirements whenever a change is made in a covered agreement. This requires that the initial agreement be specific and that it be amended for record keeping purposes each time the consultant has a conversation with a HUD official. This imposes a significant and unconscionable record-keeping burden on the consultant and the client.

(one consultant and three law firms)

Response. The commenters have misunderstood the rule. The event that triggers the rule's applicability is the agreement to make an expenditure. Entering into the agreement invokes the rule's record keeping and reporting requirements for the client, as well as the registration and reporting requirements for the person retained to provide the influence. If the agreement calls for communication with the Department, each phone call does not require separate record keeping, reporting, and registration: the agreement is the triggering event, and the call is within the agreement's terms.

Of course, situations that effectively change an agreement, or create a new agreement, are subject to all section 13's requirements. For example, if the actual expenditure differs from the consideration specified in the agreement, the difference must be reported to the extent its value is greater. (If the expenditure is less than the consideration set out in the agreement, no change may be made in the amount in the agreement.)

To provide clarification on this point, the following example is offered:

—A pays B \$15,000 to make contacts at HUD to push along A's application for an award. B makes a number of calls to HUD officials on A's behalf.

Between 1/1 and 1/10 of the next calendar year, A must report the \$15,000 expenditure. A need not treat the phone calls as a new "expenditure," since the calls were part of the original overall agreement. Similarly, B need only register once and need not submit a new registration with each call, although he will be required to report on the calls in his registrant's report.

If A and B later renegotiate the amount of the agreement from \$15,000 to \$10,000, neither A nor B can reduce the reported \$15,000 amount. For all purposes, the original agreement of \$15,000 stands.

On the other hand, if A agreed within the same reporting year as the original agreement to pay B an additional \$3,000 for some additional contacts at HUD, still in furtherance of influencing HUD's actions on A's application, then A's and B's reports must reflect the higher amount. If the initial agreement and the increase occurred in different years, and the payment was not contemplated by the original agreement, the increase is reportable by both A and B in the year in which the expenditure was made. In either case, B must update his registration.

4. Comment. The scope of this rule is too broad. The statute was passed in part to curb what Congress perceived as the favoritism involved in allocating scarce resources to new developments. To extend its applicability to cover allocation of common resources to property the Department already

monitors would be unjust, unreasonable, and almost impossible to adjudicate fairly.

(three law firms, two national associations, and one consulting firm)

To the extent that the statute's requirements are not needed to ensure integrity, they should not be imposed (to the extent statutory interpretation permits).

(one law firm)

Response. The statute requires (1) record keeping and reporting of expenditures made to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department and (2) registration and reporting by persons retained to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department. These requirements are not limited merely to "favoritism involved in allocating scarce resources to new developments." The statutory definition of "financial assistance" extends beyond this to include "any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages." If the actions fall within that definition, the statute requires coverage.

5. Comment. It is the role of Congress, not HUD, to establish the Act's requirements; HUD must not legislate beyond the Congressional intent. Section 13(a)(1) subjects "each person who makes an expenditure * * *" to the Act's record keeping requirements, by requiring the person to keep a detailed account of "all such expenditures made by or on behalf of such person." "On behalf of" is an informational requirement; it alone does not subject a "person on whose behalf expenditures are made" to the rule's requirements.

(one national association and one State organization)

Response. Section 86.20(a)(1) of the proposed rule covered three classes of persons:

- Those who *themselves* make a covered expenditure;
- Those who make a covered expenditure *on behalf of* another person; and
- Those *on whose behalf* a covered expenditure is made.

The commenter would exempt the third category of persons from the rule's coverage. The effect of this approach would be to shield from the rule's disclosure requirements those who would be subject to the rule in all

respects, except that someone else made the expenditure for them. The Department believes that this result is inconsistent with both the provisions of section 13 and congressional intent.

Section 13(a)(1) reaches "each person that makes" a covered expenditure. The Department does not believe that this language limits the rule's coverage to persons who make an expenditure *on their own behalf*. Those who are principals in a lobbying effort, and who enlist another to make the expenditure for them, equally "make" the expenditure.

To find otherwise would create a loophole that would threaten the statute's very functioning. The commenter's approach would permit those who are at the center of a lobbying enterprise to avoid detection entirely by collaborating with other "financiers" and hiding their identity from possible reporting by their lobbyists. Even if their identity were known, the commenter's idea would permit them to evade the statutory reporting requirements by ensuring that their *own* payments did not meet the \$10,000 reporting threshold.

The Department does not believe that Congress intended such a destructive result. In the Department's view, when the Congress referred to expenditures "by or on behalf of" a person, it intended to identify the players subject to section 13's requirements, not as a mere "informational" matter.

6. Comment. The commenter is concerned that the rule has extended the scope of the statute to persons who never communicate with the Department. Every time a project owner, a nonprofit organization, or a State or local government hires an attorney, architect, accountant, or project manager to prepare a document for submission to the agency, it is intended to be persuasive, but that in and of itself should not bring that person under coverage.

The rule should be revised to clarify that persons hired to provide advice or professional assistance in dealing with the Department are subject to the requirements of the statute when they communicate verbally or in writing with the employees or officers of the Department.

(two consulting firms)

Response. Persons hired to provide professional or technical advice or assistance in dealing with the Department are not subject to the requirements of the rule when their communications to the Department are in compliance with HUD requirements,

as set forth in § 86.25(d). In addition, professional and technical experts providing persuasive documents not in compliance with HUD requirements, are not covered by the rule where there is no direct communication with the Department. For example, where the hired professional assists the client by preparing documents for the client's signature and returns the documents to the client for further submission, the hired professional is not covered. However, where the hired professional makes the submission on behalf of the client or submits the documents under a cover letter signed by the hired professional, that professional is covered and is required to register with the Department. The critical factor in this situation is who is making the contact.

7. Comment. The rule should be changed to limit its application to independent lobbyists and consultants and the organizations who hire them.

(one consulting firm)

Response. The statute has determined to whom this rule should be applied. The statutory definition of "person" is "an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people."

8. Comment. The statute casts the shadow of impropriety over the everyday conduct of business for existing properties. The retention of an attorney who is an expert in the HUD practice is not unusual nor suspect.

The rule must be clarified to ensure that such categorization does not result. It fails to appreciate that for any existing property, there is a continuing dialogue between HUD as regulator and the owner, its agents, and associated professionals. All such contacts necessarily involve attempts by one group to influence the other for benefit of the property.

(two law firms and one consulting firm)

Response. The commenters believe that the statute and the rule have the effect of questioning the propriety of efforts to influence the Department, and of casting a shadow of suspicion over those who make those efforts. The Department does not believe that this concern is justified. The statute and rule do not pass judgment on, nor affect in any way, the substance of attempts to influence the Department. The requirements are procedural only: they provide for the disclosure of attempts at influence that do not meet specified exceptions. Through this "sunshine"

mechanism, the requirements are designed to help improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence. Indeed, in the Department's view, full and diligent compliance with the statute and rule will go far toward dispelling any lingering suspicion among the public regarding the fairness of the Department's assistance processes and the motives of those who use them.

With specific regard to the above comment, the statute and the rule do appreciate the need for dialogue between HUD and the owner and its agents and other associated professionals. These requirements do nothing to affect the dialogue. They simply require that certain procedural steps be taken if the dialogue includes attempts to influence and the dialogue is not otherwise excepted.

9. Comment. The examples in appendix A should be reviewed. It is most unlikely that an attorney would believe that "chatting" with a secretary would result in "influencing" a HUD official's decision on any matter. Congress did not intend that such activities as leaving an urgent telephone message be a covered communication.

(two law firms and one consulting firm)

Response. The examples in appendix A, that was appended to the proposed rule, have been reviewed and, in some instances, have been refined further to clarify the position of the Department on certain aspects of the rule. However, the scenario referred to in the comment above is representative of many situations where influence may successfully be made by contacts with persons other than the ultimate decision-maker. Secretaries to decision-makers may be in a unique position to influence their superiors, such as by mentioning the lobbyist favorably or by putting before the decision-maker those proposals the secretary has been urged to push or by prioritizing the order in which the decision-maker should review proposals. The critical issue is whether there is an intent to influence.

10. Comment. The penalties imposed for violation of the registration and disclosure provisions are severe and could be devastating for small nonprofit organizations.

(one consulting firm)

Response. Based on the statutory provisions, the rule lists at § 86.35(b)(3) the factors in determining the amount of penalty for violation of the requirements

of the rule. Most notable of the factors are the "ability to pay the penalty, injury to the public, benefits received, and deterrence of future violations."

11. Comment. In some sections, the requirements are so ambiguous that reasonable efforts to comply with, or to persuade the agency that the applicant is appropriately complying with, the conditions, requirements, and procedures of HUD programs could inadvertently subject an applicant to the burdensome reporting requirement or costly penalties. The rule should specify in greater detail the kinds of communications with the Department that are not considered influence peddling. Neither the rule nor its Preamble or Appendix A offers clear guidance on how to distinguish between contacts for "compliance" as opposed to "influence."

(two national associations and one consulting firm)

Response. In response to this comment, we have added examples of the kinds of communication with the Department that are not considered influence peddling. Also, the definition of "influence" in § 86.15 has been revised to add a cross-reference to the exceptions for compliance with HUD requirements (§ 86.20(d) and 86.25(d)), litigation (§ 86.20(e) and 86.25(e)), and the activities of State and local officials (§§ 86.20(f) and 86.25(f)).

12. Comment. The rule does not make it clear that all efforts to comply with conditions, requirements, or procedures imposed by the Secretary will not trigger the registration and disclosure requirements. Information or legal analysis provided to convince the HUD employee that the applicant's interpretation is correct should be considered part of the process of complying with such conditions, requirements, or procedures. The normal course of give and take, interpretation, and negotiation which of necessity includes the intent to influence an agency decision should not be subject to the registration and disclosure requirements.

(one consulting firm)

Response. The general rule is that the requirements of this rule do not apply to any efforts involving compliance with conditions, requirements, or procedures imposed by HUD. Therefore, anything done in support of those efforts, such as providing information or legal analysis, will be considered part of the process of complying with HUD conditions, requirements, or procedures, provided the efforts are directed toward

compliance with the HUD requirements and are within the established channels for receiving such communications. For example, the exception could not be claimed if the invitation from HUD to submit the supporting documents is no longer open, or if the communication is made to a HUD officer or employee other than those appropriate to receive the documents.

The reader is reminded that where the communication is in response to a written HUD requirement, it may be initiated by the applicant or his hired consultant or professional. However, where the communication does not emanate from a written requirement, in order to qualify for the exception, such contacts may only be as a result of solicitations by the Department.

13. *Comment.* Clarification should be provided for situations where applicants do not apply directly to HUD for financial assistance, but need HUD's assistance in assuring program requirements are properly followed. The appeal should not trigger the registration and disclosure requirements. It should be clear that letters written in support of an application, where the writer is not being paid or will not automatically benefit from the award, should not trigger the registration and disclosure requirements.

(one consulting firm)

Response. Appeals and letters of support will not trigger the registration and disclosure requirements as long as they fit one of the exceptions provided for by the rule, most notably as discussed in the previous comment. Similarly, an attempt to advise HUD of program problems would be within the exception, provided such notification procedures are provided for in the program regulations or handbooks or are requested by a HUD officer or employee.

14. *Comment.* In the day-to-day operations of local government, there is a continual need to make contact with Federal officials—both at the national and regional levels—in an effort to ascertain information involving grant and financial assistance.

The rule is extremely vague as to where the line is drawn between "information seeking" and "government lobbying." The commenters believe that this vagueness will limit the amount of communication between the two levels of government.

(two national associations)

Response. Contacts with HUD only seeking information are not subject to the rule. These communications lack the *sine qua non* of applicability—the intent

to influence the Department. In light of the comments received, however, an example has been added to exemplify when contacts by State and local government officials would *not* be covered by the rule.

It should be noted that the final rule affords a special exception for State and local government officials, as discussed later in the *Public Comments* section of the Preamble. All elected State and local government officials, the political appointees who serve on the personal staffs of State and local elected officials, and all full-time, appointed officials of the State or local government who serve in policy-level positions are excepted. (See §§ 86.20(f) and 86.25(f).)

15. *Comment.* Implementing HUD programs the way in which HUD and Congress intend can only occur if applicants for, and recipients of, HUD funding are able to communicate openly and freely with HUD. The rule inhibits the very dialogue that should be encouraged.

(one national association)

The rule professes to be procedural, but its real effect is prohibitory. Only if HUD clears up the ambiguities and narrows its application of the requirements in such a way as to allow necessary interaction between HUD and its constituency, can the rule really be procedural.

(one national association)

The rule is likely to have the unwanted effect of discouraging many excellent firms from representing their traditional clients before HUD from time to time, making it more likely that these clients will wind up with a hard-core "influence peddler" that has learned the "ins" and "outs" of the rule. Law firms that do not have a substantial HUD legal practice are likely to abandon representing clients before HUD to avoid the complications of the rule and related penalties. The rule will discourage diversification of HUD representation, leaving the field even more in the control of full-time lobbyists.

(one law firm)

The scope of the proposed rule, when combined with the very serious penalties, will tend to drive away from the programs those who can best help the public and private sectors in developing affordable housing. These same impediments will encourage builders to leave the lower price ranges for the middle and upper income markets which do not involve HUD.

(one law firm)

The rule will have a very serious impact on the legal services of housing

law firms, and it is urged that the sweeping coverage be reconsidered.

(three law firms)

The rule will adversely affect an attorney's ability to provide competent representation to clients who have business dealing with HUD. It is also cumbersome and impossible to implement.

(one law firm)

The potential for chilling entirely legitimate and desirable contacts between Federal officials and affected program participants and citizens through reporting forms is substantial and real.

(two law firms)

Response. As stated earlier in this *Public Comments* section, the Department believes that this rule will cast sunshine on the processes by which the Department awards financial assistance and takes management actions, and that applicants for, and recipients of, HUD assistance will appreciate the fair and open manner of the Department's processes. The Department also believes that law firms, builders, and others engaged in the development of affordable housing will be relieved to know that decisions made by the Department will be free from improper influence, and that their submissions will be evaluated fairly.

The "impediments" perceived by the commenter are impediments only to the extent the persons involved allow them to inhibit their actions. We have taken steps to reduce the burdens of record keeping, registration, and reporting as much as the statute will allow us. The Department believes that once the public becomes familiar with the procedures associated with this rule, the public will recognize that the burdens are not that significant and that the rule is merely a procedural mechanism to bring sunshine to the Department's processes for awarding financial assistance and making management actions.

All representation is not subject to the rule, and the rule is not designed to inhibit open and necessary representation of applicants for and recipients of HUD assistance. Those representations made in compliance with HUD requirements are totally excepted from coverage. The rule is not designed to inhibit dialogue with HUD, and nothing absolutely interferes with dialogue with HUD. The requirements do nothing to affect the dialogue. They simply require that certain procedural steps be taken if the dialogue includes

attempts to influence and is not otherwise excepted from coverage.

16. *Comment.* Why have HUD and the Federal housing programs been singled out for oppressive and burdensome registration and reporting requirements for lawyers doing normal legal work? Housing and those lawyers who seek to help their clients understand and work with and within HUD housing programs, should not be discriminated against because of abuses at HUD by the prior administration.

(one law firm)

Response. The rule's coverage is set by statute. Lawyers are included in the definition of "person" and, as such, are covered by the requirements of the rule. It should be noted, however, that much of the work performed by lawyers should meet the exceptions established by the statute for litigation or compliance with HUD requirements. In any case, to the extent that representation does not qualify for an exception, then contacts made in furtherance of those lobbying efforts will be subject to the record keeping, registration, and reporting requirements of the rule.

17. *Comment.* The Reform Act requirements, coupled with the overlapping Byrd Amendment requirements, are extremely confusing. The penalties are too rigid. The commenter does not believe that any person or organization that attempts to comply with the confusing requirements should be penalized until there is greater clarity and understanding.

(one national association)

Response. The Preamble to this rule discusses the relationship between the Byrd Amendment and the HUD Reform Act. The two statutes deal with the same subject—attempts to influence HUD in the award of financial assistance and the taking of post-award actions—and they contain a number of overlapping provisions. Both statutes contain thresholds for coverage and exceptions from coverage. Therefore, the reader should consult both implementing rules to determine whether his or her activities are, in fact, subject to the requirements. In general, however, the reader should be guided by the following if his or her activities include attempts to influence HUD decisions:

—If section 112 applies, but not the Byrd Amendment, the provisions of section 112 must be met.

—If the Byrd Amendment applies, but not section 112, the provisions of the Byrd Amendment must be met.

—If both section 112 and the Byrd Amendment apply, the provisions of both must be met.

With regard to the commenter's concern for the rigidity of the penalties, the reader is reminded that at § 86.35(b)(3), there appears a listing of factors that must be considered in determining the penalty for a violation of the rule. The commenter's request for some type of delay in full implementation of this rule is discussed below.

18. *Comment.* Harsh civil and criminal penalties are connected with the rule. Therefore, HUD should allow for at least a minimum of 90 days between the issuance and the effective date of the final rule to lessen the problems with implementation.

(one national association)

A good faith exception to the penalties would be reasonable for an initial period of time. In the meantime, an exchange of information is needed with the parties subject to the two laws to identify problem areas that might need to be addressed in a revised rule.

(one national association)

Response. The commenters are suggesting that the public be afforded a "grace" period during which affected persons will not be subject to the penalties of the rule. The rule provides for an effective date 30 days after publication.

However, the Department agrees that some form of transition period is warranted, given the rule's length and complexity. Accordingly, the Department will not impose any penalty or sanction, under the rule or otherwise (including civil money penalties under § 86.35), for failure to meet the rule's requirements during the 60-day period after effectiveness. Since the rule would be in effect during this period, the public will be expected to comply with it, but the Department will not impose penalties for any failures during that period.

19. *Comment.* Section 112 is a penal statute and must be strictly construed. Penal statutes must be statutorily construed in favor of the persons sought to be subjected to their operations. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. Such a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it.

(one law firm)

Response. We agree with the commenter, and have done the best we

can to interpret the statute within the rules of strict construction and still carry out its mandates. As discussed elsewhere in this Preamble, the final rule contains additional refinements that narrow the scope of the rule even further.

20. *Comment.* A chart that shows the record keeping, reporting, and registration requirements for the person making the expenditures as well as the person receiving the expenditures, and which activities in each category are exempt, would be helpful.

(one national association)

Response. In response to this comment, a chart is appended to the rule as appendix B to set out the coverage, the requirements, and exceptions to this rule. However, the reader is admonished to read the rule, its Preamble, and the standards set in appendix A carefully in order to acquire a full understanding of the requirements and exceptions, and of the interpretations necessary to understand how they relate.

21. *Comment.* It is important to understand the role of the HUD Office of Ethics. Will the office issue advisory opinions? Will its opinions be published in the *Federal Register*?

(one national association)

Response. As set forth in a separate *Federal Register* Notice to be published at a later date, the Office of Ethics will receive all of the registration and reporting documents required to be filed under this rule. These documents will be retained by the Office of Ethics for at least a two-year period, beginning on the date of filing, and will be made available for public inspection. The Department will publish a Notice in the *Federal Register*, informing the public of the specifics of when and how public inspection may be conducted.

The Department will also compile all the information submitted, as soon as practicable after the close of the reporting year, for publication in the *Federal Register*.

In addition to the Office of Ethics being the primary contact for questions regarding this rule, the Department will issue through the Office of Ethics advisory opinions on novel questions that are presented. These opinions will also be published in the *Federal Register*.

As stated above, the Department is publishing in the *Federal Register* on this date, information about the Office of Ethics, so that the public will know who to contact and where to submit information required by the rule.

B. Comparison With Other Provisions of the Reform Act

22. *Comment.* The rule proposes the broadest possible coverage of section 112 of the statute, by focusing primarily on the "any financial assistance" portion of the statutory definition of coverage. This contrasts starkly with the Department's interpretation and proposed implementation of section 102 of the HUD Reform Act, entitled "HUD Accountability." (Proposed rule published on June 19, 1990, at 55 FR 25035.) The two statutory provisions are contained in the same subtitle of the HUD Reform Act, and the statutory terms defining their respective coverages are virtually identical.

Section 112—and the other sections of Subtitle A that contain similar language and prescribe similar regulatory frameworks with civil penalties for violations—must be construed, to the maximum extent practicable, in a consistent manner from section to section, and in a manner that restricts the application and coverage of each of the provisions with penalties to the smallest category of persons, and to the smallest category of interactions with the Department, as is clearly provided for by the plain language of each provision of the statute, with any ambiguity or uncertainty regarding the scope of coverage of the provision resolved against coverage and any ambiguity regarding the extent of an exception to coverage resolved by broad construction. Also, words, terms, and phrases used in two or more subsections or sections of Subtitle A must be interpreted consistently from usage to usage, unless there is a compelling reason to the contrary.

Section 102 is concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. "Demand" programs, such as FHA mortgage insurance and GNMA guarantees; formula programs; and non-formula, non-demand programs and actions that do not distribute assistance on a competitive basis, are excluded. Also excluded are programs and actions that "necessarily follow competitive or 'demand' program funding decisions almost as a matter of course," such as contract renewals and extensions, Section 8 Property Disposition assistance, and the provision of assistance as an incentive in connection with a HUD-approved plan of action under Title II of the Housing and Community Development Act of 1987.

Section 112 should result in a similar narrowing of the scope of coverage to instances that truly involve a "decision

to grant or deny" assistance, as strongly inferred from use of the word "award" in both section 102 and section 112. Covered funding actions should be limited to non-formula, non-demand competitive selections; and covered "management actions" should be limited to financial assistance that originally was "awarded," *i.e.*, where the original award would have been covered if it had occurred after the effective date of the final rule implementing section 112.

The legislative history recognizes two distinct categories of assistance, and differentiates between HUD assistance allocated and awarded to "funding applicants," on the one hand, and HUD assistance under various FHA demand programs and other non-selection programs, on the other hand.

The rule totally ignores this clear and reasonable distinction. A major benefit of narrowing Section 112's coverage would be to exclude most day-to-day actions that occur in HUD field offices.

(six law firms and one national association)

Response. The Department believes that the commenter's approach is inconsistent with the plain meaning of section 112, as well as with section 112's reform objectives. The commenter's position is based on the following two arguments:

- The statutory terms defining the coverages of section 112 and section 102 of the Department of Housing and Urban Development Reform Act of 1989 are "virtually identical," and should be interpreted similarly. Since section 102 is limited to programs that distribute assistance on a competitive basis, section 112 should be similarly interpreted.
- Section 112's use of the phrase, "award" of financial assistance, "strongly infers" congressional intent to limit the provision's coverage to the competitive distribution of assistance.

In the Department's view, the commenter's reliance on the section 102 analogy is misplaced. Initially, the terms are not "virtually identical." Section 102 uses two terms to define its coverage. Section 102(a) refers to "assistance under any program or discretionary fund administered by the Secretary." This is the language that the Department interpreted to be limited to competitive assistance and that the commenter relies upon. The term is undefined.

Section 102(m)(4) defines the phrase, "assistance within the jurisdiction of the Department," for use in the remainder of section 102. That term is defined to include any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or

guarantee of a loan, mortgage, or pool of mortgages. Section 112 applies to "financial assistance within the jurisdiction of the Department." The definition of the term (section 13(f)(3), as added by section 112) is identical to section 102(m)(4).

Thus, the terms used in section 102(a) and section 112 are not "virtually identical." The term upon which the commenter relies is different, and one term is defined and the other is not. Thus, from a purely textual standpoint, the commenter's argument falls. Indeed, the presence of two different definitions in section 102 argues strongly that the Congress did *not* intend them to be treated in identical fashion. If anything, an argument may be made that section 112 and section 102(m)(4) are to be treated the same, but section 102(a) differently.

More importantly, the respective statutory contexts compel different coverages. In establishing the coverage of section 102(a), the Department relied exclusively on an analysis of the provision's context. As stated in the Preamble to the proposed rule:

* * * * *

The first two elements of Subpart B (Sections 102(a)(1) through (4) (B) and (E) and (5)) of the Reform Act apply to "assistance under any program or discretionary fund administered by the Secretary." The term is undefined, and requires an interpretation to establish its coverage. Based on an analysis of the relevant provisions of section 102, the Department believes that this term should be limited to *discretionary* authorities administered by the Department that provide assistance on a *competitive* basis.

It is true that use of the phrase, "any program or discretionary fund," is very broad, potentially covering any HUD program that provides "assistance." In its widest interpretation, the phrase could apply to discretionary, competitive programs, as well as those authorizing formula grants, FHA mortgage insurance, and GNMA guarantees. In the Department's view, however, the context of section 102 compels a more restrictive reading.

Section 102 appears to be primarily, if not exclusively, concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. These attributes are the traditional hallmarks of discretionary programs that provide assistance on a competitive basis: programs that announce the availability of assistance, invite applications to request assistance, and make decisions competitively, based on the application and specific selection criteria. (55 FR 25038) (emphasis in original)

* * * * *

Nothing in section 112—textual or contextual—counsels limiting its coverage in this way. Indeed, the Department believes that just the

opposite is true. Section 112 is designed to ensure that the process by which the Department awards financial assistance and takes management actions is fair and open, and free from improper influence. These processes are not limited to competitive assistance programs. Precisely the same abuses that gave rise to section 112 can occur in demand, formula, and the other programs referred to by the commenter. To limit section 112 as the commenter suggests would ignore both the plain language and clear congressional intent in enacting the provision.

Finally, the Department does not believe that use of the term, "award of financial assistance within the jurisdiction of the Department," in section 112 argues for restricting the coverage of the provision to competitive programs. As noted earlier, the definition of "financial assistance within the jurisdiction of the Department" specifically includes mortgage or loan insurance and guarantee. Since these are demand, not competitive, programs, Congress clearly did not intend that "award" be limited to assistance that is competitively distributed.

C. Forms

23. *Comment.* Forms would be helpful and should accompany the final rule.

(one national association)

Response. Forms are being published with this rule.

24. *Comment.* The forms should be published as proposed and should be limited to requesting the names of the parties and the amount of the expenditure, and not inquire into the substance of the agreement between the parties.

(two law firms)

Response. The forms being issued with this final rule are completely congruent with the rule, as it is modified in response to public comments. The forms do not require any more substantive information than is required by the statute, and the proposed rule clearly sets forth the content of the forms. For purposes of storing and checking data, the forms require an identification of the project or other object of the influence, such as the project number. However, no more information than that which is absolutely required by the statute, or necessary for accomplishing the record keeping, registration, and reporting requirements of the statute, is requested. For this reason, the Department feels completely justified in publishing the proposed rule without the accompanying forms.

25. *Comment.* The commenter urges that the forms not contain the requirement set forth in Standard Form LLL (used in the government-wide rule implementing the Byrd Amendment) that requires disclosure of the name of each agency official or employee contacted. Such a requirement might raise fears on the part of employees of being suspected of having been subjected to, and even submitting to, improper influence. The result could be that agency employees will close themselves off from legitimate contacts on behalf of affected program participants in order to avoid being named in a disclosure form. That will not be a positive or desirable result, and surely not one intended by Congress.

(two law firms)

Response. The forms do not require disclosure of the name of any agency official or employee contacted.

26. *Comment.* The rule should permit flexibility in the reporting format. The \$10,000 threshold for reporting is not overly burdensome if it does not require any special format or record-keeping. Copies of bills to clients could be provided with little difficulty.

(one consultant)

Response. The forms reflect the statute and are fairly straightforward as to the information requested. The statute has set forth the requirements, and does not permit for the flexibility suggested by the commenter.

D. Constitutional Questions

27. *Comment.* The broad interpretation of the rule is overreaching and would have a chilling effect on the First Amendment right to petition the government.

(six law firms and one national association)

Response. The First Amendment provides—

Congress shall make no law * * *
abridging * * * the right of the people to
* * * petition the Government for a redress
of grievances.

In keeping with the holding of *United States v. Harriss*, 347 U.S. 612 (1954), as discussed below, the Department does not believe that the rule will have a chilling effect on the public's right to petition the Government.

The rule is a direct implementation of the statute, and the Department has made only those interpretations necessary to carry out the full meaning of the statute. The public still has the same access to the Government as it did before. The rule merely requires that where the purpose of a contact with HUD officials is to influence a HUD decision, simple record keeping,

registration, and reporting requirements must be met.

The constitutionality of the disclosure provisions of the Federal Regulation of Lobbying Act, 2 U.S.C.A. 261-270, was the issue before the Supreme Court in the *Harriss* case, but the Department believes that the holding and supporting dicta of that case squarely support the Department's position on the issue regarding the right to petition the Government, as raised by the commenter.

In *Harriss*, the court held that the freedoms guaranteed by the First Amendment were not violated by the disclosure requirements of that Act, when they are construed to be limited to the reporting of all contributions and expenditures having the purpose of attempting to influence legislation through direct communication with Congress, and to registration of those who were covered by the statute and who, in addition, engaged themselves for pay or any other valuable consideration for the purpose of influencing legislation. Otherwise, the court pointed out, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal; this is the evil that the court found the Lobbying Act was designed to help prevent.

Furthermore, in *Buckley v. Valeo*, 424 U.S. 67 (1975), which challenged the governmental interests of the laws governing campaign donations, the Court held that record keeping, reporting, and disclosure deter corruption and are essential means of gathering data necessary to detect violations.

Harriss continued that even if the Act might serve as a deterrent to a person's exercise of First Amendment rights, such restraint would be at most an indirect one resulting from self-censorship, and the hazard of such restraint is too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and designed to safeguard a vital national interest.

28. *Comment.* The rule's reporting requirements may infringe upon the Fifth Amendment rights of an individual against self-incrimination and the attorney-client privilege. Parties should not be required to document information that later may be used by the Department or other law enforcement authorities for the purpose of investigating possible criminal acts of the parties. In addition, the forms may impact upon an attorney's ability to

comply with the professional code of ethics, and to protect the confidential nature of the relationship between attorney and client.

(three law firms)

Response. The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself." (Some recent cases have held that the privilege against self-incrimination can be asserted in civil and administrative proceedings also. (*Blau v. U.S.*, 340 U.S. 159 (1950); *Quinn v. U.S.*, 349 U.S. 155 (1955).)) However, based on the following case law, the Department believes that it is premature of the commenter to assert his or her rights under the Fifth Amendment in connection with complying with the requirements of this rule.

Where a statute requires a person to disclose information, and imposes criminal sanctions for failure to do so, the person may refuse to comply on the basis of his privilege against self-incrimination *only* if furnishing the information would create a real and appreciable hazard of incrimination. (*California v. Byers*, 402 U.S. 424 (1971)) There must be the presence of a "real" and not "imaginary" risk of self-incrimination. (*U.S. v. Wade*, 388 U.S. 218 (1967).)

However, leading cases, such as *Byers*, emphasize that where a statute is essentially regulatory, not criminal, a disclosure requirement does not create a sufficient risk of incrimination and that, even if it were viewed as incriminating, it is not "testimonial" in the Fifth Amendment sense. Furthermore, in balancing the public need on one hand, and the individual claim to constitutional protections on the other, the court stated that the statutory purpose was noncriminal, and self-reporting was indispensable to its fulfillment.

In light of the above, the Department believes that it is unwarranted for the commenter to assert the privilege. Section 13 is only a disclosure statute: the commenter has not been asked to testify in a proceeding. The risk of self-incrimination is at best imaginary at this time. The appropriate time to assert the privilege is during a legal proceeding during which the commenter is asked to testify. This would not occur until a violation of the rule was alleged and a formal proceeding begun.

Furthermore, it is not certain that all testimony would be held "privileged." It is up to the trial court to determine whether any direct answer to the question could implicate the witness.

(U.R. 37.5; Ev.C. 915.) That can only be determined at the time of testimony.

The Department does not believe that the requirements of this rule infringe on the attorney-client privilege of confidentiality. In general, the purpose of the attorney-client privilege is to encourage full disclosure by a client to the attorney of all pertinent matters, so as to further the administration of justice.

However, not all communications or conversations between an attorney and his or her client are privileged. Certain essential prerequisites must be present in any case involving attorney-client privilege before the protection afforded by the privilege may be invoked. The case law discussed below sets out those prerequisites, and supports the Department's belief that the information required to be submitted under the requirements of this rule is not of a nature that would permit successful assertion of the attorney-client privilege of confidentiality.

Essentially, a client must approach an attorney in his capacity as a lawyer for the purpose of procuring legal advice or assistance, and must communicate, *in confidence*, with the attorney or his or her subordinate, under circumstances where it is reasonable to assume that the client does not intend that the communication should be relayed to third parties. (*U.S. v. United Shoe Machine Corp.*, 89 F.Supp. 357 (1950).)

Additionally, a communication between a client and the attorney neither inviting nor expressing any legal opinion, but involving mere soliciting or giving of business advice, is not privileged. (*United Shoe Machine*, supra.) Therefore, peripheral matters, or matters not intended to be communicated to the attorney in confidence, are not protected.

Pre-existing documents, or documents shown or intended to be disclosed to third parties, are not protected by the privilege, since they were not intended to be confidential. (*U.S. v. Merrell*, 303 F.Supp. 490 (1969).)

Furthermore, the authorities are substantially uniform against any privilege as applied to the fact of retainer or identity of the client. The privilege is limited to confidential communications, and a retainer is not a confidential communication. The amount of fees and facts regarding payment thereof is not privileged. (*U.S. v. Pape*, 144 F.2d 778 (1944); *Colton v. U.S.*, 306 F.2d. 633 (1962).)

To the extent that the information sought by this rule is not of a confidential nature, the attorney-client privilege does not apply. The existence of a retainer and the details regarding

payment under the retainer agreement have been held not privileged. In addition, the information exchanged between the attorney and the client in preparation of the forms required under the rule would not be privileged, inasmuch as it would be information intended to be disclosed to third parties.

There may be other exchanges of information between the attorney and the client that may be considered privileged; however, the validity of the assertion of the privilege cannot be made prematurely. To invoke the privilege, the attorney must properly assert it, and must establish to a court's satisfaction that it is applicable under the particular facts involved. The party asserting the claim of attorney-client privilege has the burden of establishing its applicability. (*Colton v. U.S.*, supra.)

29. *Comment.* The legal profession operates under its own court-sanctioned codes of ethical conduct. To subject practicing lawyers to an additional set of standards is unnecessary and can lead to conflicts with attorney ethical codes.

A general provision should be added that states that nothing in the rule is meant to override the mandated ethical requirements for the legal profession or to require a member of a bar to compromise his or her professional representation of his or her client.

(one law firm)

Response. The Department does not have discretion to provide for special coverage for lawyers: by the statutory definition of "person," lawyers are included in the coverage of the statute and this rule. In addition, the Department does not believe that the rule is intended to question the ethics of lawyers or to challenge existing codes of ethical conduct. Rather, we believe that this rule is intended to augment basic principles of ethics and to protect the public interest.

30. *Comment.* The commenter has no conceptual argument with a requirement to report its business, although it does find it a violation of its privacy to have such information published in the **Federal Register**.

(one consulting firm)

Response. The registration and reporting information required by this rule is contained in a Privacy Act system of records. The Privacy Act of 1974, 5 U.S.C. 552a, governs the disclosure of such records, and the Act permits disclosure of information to the public, in certain circumstances, as a "routine use" established under 5 U.S.C. 552a(b)(3). As defined at 5 U.S.C.

552a(a)(7), "the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected." Because section 112 requires the Department to compile reporting and registration information and publish it in the **Federal Register**, the Department may properly disclose the information in accordance with an established routine use.

E. Definitions

1. Definition of "Person"

31. *Comment.* It was not the intent of the statute or the legislative history to extend the two-player scenario to internal arrangements within a single actor such as a law firm (or a trade association). The Department should not ascribe separate "agreements to make expenditures" within a single "person" such as a law firm. In the case of a law firm, a report must be filed separately for different lawyers within the firm, both as to making expenditures and receiving expenditures. This is inappropriate. The law firm should be a reporter of expenditures, only if it retains and pays another law firm or consultant. It should not have to allocate time and salary between partners and associates.

Elimination of intra-firm "agreements" and "expenditures" from the registration, reporting, and record-keeping requirements of the statute will not deprive the Department or the public of any disclosure which will promote the purposes of the statute. Instead, it will avoid the cluttering of the Department's files with information that is duplicative, confusing, and uninformative and endlessly difficult to calculate as well. It will also lessen the burden of the annual report.

The focus of the legislation is on the names and fees of consultants and lobbyists hired to influence the Department's decisions, not the internal expenditures of the consultants and lobbyists. Identification of individuals within a single firm is another matter, and can be adequately interpreted and implemented by requiring the identification of pertinent individuals within the firm's registration.

(six law firms, two national associations, and one consulting firm)

The rule represents an extremely significant administrative burden for a law firm. Accounting systems must be developed, and employees and clients must be formally briefed.

(one law firm)

Response. The Department has reexamined the statute in light of the concerns expressed on this issue, and has decided to alter its original position. The Department continues to believe that the approach adopted in the proposed rule represented an acceptable reading of the statute. The statutory requirements apply to "each person." "Person" is defined to include both an individual and an entity. In the commenter's example, both the law firm, and the firm's partners and associates, are "persons." Treating the firm and its members and associates as separate "person" under the rule, therefore, is, in the Department's view, an appropriate interpretation.

The Department, however, agrees with the commenter that the intent of the statute can be carried out by treating entities that are retained to provide lobbying services as a single "person" for purposes of the rule's registration and registrant reporting requirements.

The approach taken in the proposed rule was designed to ensure that the Department obtained all meaningful information about the entity's lobbying activities. Under the approach suggested by the commenter, the Department will be able to obtain all the important information, but without the additional burden that the proposed rule would have entailed.

Thus, the final rule has been amended to treat an entity (such as a law firm, a consulting firm, or an association) that is retained to provide lobbying services as a single "person" for purposes of registering and reporting under § 86.25. Consistent with the single "person" approach, the new procedure can only be used in the case of those who work with the entity on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children. Expenditures made to others represent a new "two-party" relationship, and are subject to the record keeping and reporting requirements specified in § 86.20. A similar approach has been taken with respect to associations that finance covered lobbying efforts with a combination of general membership income and specific contributions for a specific lobbying activity. See Appendix A for examples of this situation.

As the commenters suggested, the final rule requires the entity to include within its registration the names and business addresses of the partners, associates, or other employees of the

entity who will make the actual contact with HUD. Since the identity of these individuals may change, the firm or association must update its previous registration to reflect any new individuals who will contact the Department. As with the original registration, updates must be filed with the Department within 14 days after the individual is designated in this role.

In addition, the registration must indicate whether any of the named individuals has been employed by the Federal government during the two-year period ending on the date of the registration or update, and must indicate in what capacity any such individual served.

32. *Comment.* The rule needs to clarify when associates of law firms or any party who conduct activities triggering the registration requirements must register. Once? Annually? Whenever they obtain a new client? Multiple registrations are extremely cumbersome and serve little purpose, especially when *de minimis* amounts of compensation are involved.

(one consulting firm)

Response. Registration is required whenever a person is retained to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action. This requirement is statutory. Consequently, the frequency of registration will be determined by the frequency that a person is retained.

There is no dollar threshold that must be met before registration is required; the \$10,000 threshold only applies when the registrant is trying to determine whether an annual report is needed. The reader should note that updates are required whenever there is a substantive change in the information required of the registrant; *i.e.*, name and address of registrant, name and address of the registrant's employer, name and address of any person in whose interest the registrant appears or works, and other identifying information requested on the registration form.

2. Definition of "Regularly Employed"

33. *Comment.* Objection is raised to inclusion of 130 days in the definition of "regularly employed." The commenter believes this to be completely arbitrary and unreasonable.

(one consulting firm and one State organization)

Response. The statutory definition of "regularly employed" contains the requirement that the person be employed "at least 130 working days within one year immediately before the

date of the submission that initiates departmental consideration * * * The Department may not change the definition.

34. *Comment.* On January 1, 1991, there will be a minimum of 13 new Governors, scores of new State legislators, and thousands of new local officials. The 130-day employment rule should be modified to exempt those "expected" to serve 130 days or more.

(two national associations and one law firm)

The 130-day requirement will result in an unreasonable reporting burden for State and local governments with new employees involved in discussions with HUD. The requirement should be eliminated.

(one State organization)

Response. The statute requires the 130-day determination to be made at the time of the triggering event for each request for financial assistance or management action. A snap-shot is taken: those who have been employed for 130 days during the preceding year will be considered "regularly employed;" those who have not been, will not. The Department does not have the authority to treat officers and employees on a "rolling" or "wait and see" basis.

However, as a result of the public comments received, there is afforded, to State and local government officials, an exemption as discussed later in this *Public Comment* section of the Preamble.

35. *Comment.* The 130-day standard and the requirement that the person be considered full-time (or part-time under certain circumstance) ignore the reality of the business world as it relates to HUD. Most owners are either partnerships or corporations. The final rule should state that a general partner of a partnership will be considered *per se* "regularly employed." Furthermore, many persons or entities are general partners in several partnerships. That factor should not interfere with a person being considered "regularly employed."

(one national association)

Response. Partners are considered to be employers—not employees—and as such, the exception does not extend to them. For clarification, paragraph (b) of the definition of "officer of employee" has been revised to establish that an employee is one employed by another usually for wages or salary. Paragraph (b) of § 86.15 now states:

In the case of an individual employed by a person, the individual is considered "employed" when the person for whom services are performed has the right to

control and direct the individual who performs the services.

36. *Comment.* Whether an employee is regularly employed by the person reporting should be determined by the hiring rules in place at the moment of the hiring.

(one consulting firm)

Response. The determination whether or not an employee is "regularly employed" must be based on the definition set forth in the statute. The statute does not allow for consideration of individual hiring practices.

3. Miscellaneous Issues Regarding Definitions

37. *Comment.* Clarity is needed regarding what is meant by a period beginning with a request and ending with an award. Does this mean that once a mortgage has been insured the rule does not apply?

(one consultant)

Section 86.20 states that the exception from reporting for regular employees attaches only with the submission of an application or other submission that begins the Department's consideration. This is a misreading of the statute and is inconsistent with other aspects of the rule. There is no indication that Congress intended this type of time limitation.

Moreover, under § 86.15, an agreement to make expenditures is considered to have been made when a contract is entered into, even though the recipient may not receive payment until later. Therefore, an agreement with a regular employee to expand his or her role to include lobbying would be considered an expenditure at that point, but the reporting exception would not be effective until later when an application had been submitted. Placing this time limitation on the reporting exception places persons dealing with HUD in the untenable position of submitting applications early in the process in order to be covered by the exemption or filing reports as to regular employees when that filing responsibility ends as soon as an application is actually submitted.

(one national association)

Response. The Department agrees that Congress did not intend this type of time limitation. Therefore, § 86.20(c)(3)(ii) has been removed. The phrase "requested or receives," is designed to identify the person that can qualify for the exception. It does not establish a window, within which the exception for regular employees attaches. The statute makes clear that the date of the

submission that initiates the Department's consideration of the person for receipt of assistance is the point of reference necessary to counting backwards the days of employment of an employee, in order to establish whether the employee meets the definition of "regularly employed."

With regard to management actions, the statute makes clear that the date of initiation of the management action is the point of reference for counting the days of employment. When the management action is initiated by HUD, the date of initiation of the management action is the date upon which the action is communicated outside the Department.

With regard to the specific question raised by the commenter regarding an insured mortgage, once a mortgage is insured, the rule may still apply, since that mortgage is still subject to various management actions.

38. *Comment.* The rule should be revised to clarify that the record keeping, registration, and disclosure requirements do not apply to the activities of regularly employed employees, part of whose responsibilities involve persuading the Department to award Federal assistance or to undertake management actions involving a change in the terms and conditions or status of any financial assistance. There is no logic to exempting employers from the reporting requirement without also exempting the employees.

(one consulting firm)

The Preamble takes the position that employees, even those "regularly employed", must register and report. The Department's justification is that it wants to match expenditures with receipts. Those making the expenditures (the employers) would not be required to report under the regular employee exception and those expenditures could therefore not be matched with the employees' receipts.

The registration requirements were meant to parallel the requirements of the record keeping and reporting requirements imposed upon persons making expenditures. To the extent the law relieves the expenditure maker from reporting by virtue of the regular employee exception, recipients should be similarly relieved.

(one national association)

Response. The proposed rule contained the following coverage for employers that make expenditures to their employees, and for employees who

receive compensation, for the purpose of influencing the Department:

Employers making expenditures to non-regularly employed persons:

Employers that make expenditures to employees who do not qualify for the "regular employment" exception were required both to keep records and to report on the expenditures.

Employers making expenditures to regularly employed persons: Employers that make expenditures to employees who do qualify for the "regular employment" exception were required to keep records of the expenditures only. They were not to be required to report on the expenditures.

Employees receiving compensation (all): Employees who receive expenditures were required to both register and to report, irrespective of whether they met the "regular employment" exception.

The commenters argue that where the employer is excused from reporting since the employees have met the terms of the exception, the employees should be excused from the registrant reporting requirements (one commenter), or from all record-keeping, registration, and reporting requirements (the other commenter).

The Department has reassessed the provisions of the proposed rule in light of this comment, and agrees that there is little benefit in requiring employees to report when their employers are relieved of the burden. Therefore, § 86.25(c)(3)(i) has been revised to relieve regularly employed employees from the reporting requirement under that section.

Employers and regularly employed employees are excused from the reporting requirements only. They still have to comply with the record-keeping and registration requirements, respectively. In keeping with the overall goal of the statute to bring into the "sunshine" all significant activities associated with influencing departmental decisions, it is necessary that there be a record of the individuals who are contacting HUD personnel for purposes of influencing HUD decisions.

39. *Comment.* The rule does not establish a definition of lobbying as compared with consulting (packaging and processing). The commenter would like to see a rule that states that arguing the merits or the solution of the problem, or the qualification of the applicant, and doing so generally and broadly with all staff persons involved, does not constitute lobbying.

(one consulting firm and one national association)

Response. The statute does not provide definitions for "lobbying" or

"consulting," because "influencing" is the critical term for deciding the applicability of the rule.

The reader is reminded that "packaging and processing" only is not covered by section 13. They do not involve direct communication with the Department. For matters subject to the statute, the fundamental question is whether there is an attempt to influence. Although the statute does not provide a definition of "influencing," the rule defines it in § 86.15, as follows:

to affect in any way any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department.

Because the existence of "influence" and the availability of exceptions to the rule's coverage turns on the facts of each case, the Department cannot provide *a priori* guidance for the examples raised by the commenter.

40. *Comment.* Query: If one contacts a HUD official to request that the Department correct a mistake in its records, is this lobbying? For example, a mortgage insurance certificate issued under section 203(b) that properly should be designated under section 221 drastically changes the "status" of "financial assistance."

(one consulting firm)

Response. As noted earlier, the pivotal question in determining the rule's applicability is whether the communication is intended to "influence" a decision of the Department. In the Department's view, a predicate of "influencing" is the existence of discretion in the action to be taken. If the issue involves the correction of a technical, ministerial mistake, the lack of HUD discretion in correcting it does not involve an "influencing," and, therefore, the communication falls outside the coverage of the rule. The example cited by the commenter appears to involve the kind of ministerial change that is outside the rule's scope.

As with other aspects of the rule, however, the dividing line between the correction of "mistakes" that are subject to the rule, and those that are not, may not always be clear. For example, an assertion that the Department mistakenly applied the law in a given case may well be subject to the rule, if the Department's position involved a legal interpretation.

41. *Comment.* The rule is designed to prevent unfair influence; however, nowhere in the rule does the Department seek to define the concept of "unfairness."

(one law firm)

Response. It is true that section 13's legislative history—such as it is—emphasizes the role of section 13 in combatting "unfair" influence and abuses. The statute, however, is directed at influence. There is no distinction made between "fair" and "unfair" influence, and the Department does not have the authority to craft a narrower definition.

42. *Comment.* The following definitions are confusing and too broad:

a. The term, "financial assistance," needs a clear example of what the term does not include.

(one consultant)

Response. The definition of "financial assistance" covers any contract, grant, loan, cooperative agreement, or other form of assistance that is provided under a program administered by the Department. The term includes the insurance or guarantee of a loan, mortgage, or security backed by a pool of mortgages or other instruments by the Department. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Ch.1). Nor does the term include fees for services rendered

b. The definition of the term, "management action," needs an example of what the term does not include.

(one consultant)

Response. Actions of the Department that do not involve a change in the terms or conditions or status of financial assistance awarded to a person are not management actions. Therefore, amendments, extensions, and renewals are examples of changes to the status of financial assistance that may be subject to influence. However, mere inquiry into the status of a management action, without more, is not covered. The reader is reminded that in general, any action in response to a HUD requirement, as contained in a regulation, cooperative agreement, grant agreement, etc., is not covered. Also, matters such as audits and investigations are not covered, since although they may lead to a management action, they do not of themselves involve a change in the terms or conditions of the assistance involved.

c. In the definition of "officer or employee," it apparently does not matter whether the HUD employee has the authority to make a decision or not, or even to exercise direct influence on the decision.

(one consultant)

Response. The commenter is correct. It does not matter whether the HUD employee who is the target of an attempt to influence has the authority to make a decision or exercise direct influence on the decision. The determinant is that the moving party intended to influence a HUD employee.

d. With respect to the phrase, "if the expenditure should reasonably be expected to have the effect of influencing a decision," it apparently does not matter that direct intervention with HUD is not a principal element of the original assignment.

(one consultant)

Response. There is no specific definition for this terminology. However, for clarification, the reader is reminded that the original agreement is limited by its terms, and as such, the client is able to prescribe his or her own responsibilities, as well as those of the consultant he or she has retained. If lobbying is not intended to be a part of the agreement, then it should be so specified. Otherwise, activities vaguely directed by the agreement may reasonably be expected to have the effect of influencing a decision through direct communication with a HUD officer or employee.

With regard to the commenter's specific question, the fact that direct communication with the Department is not a principal element of the agreement is not relevant. An agreement that provides—whether actually or constructively—for a covered activity is subject to the rule.

e. The definition of "agreement" does not normally specify how issues will be resolved. Since the possibility of contact with the intent of influencing HUD is almost always present, the client and the consultant would both be constrained to consider any employment even potentially involving contact with HUD, as a covered agreement for record-keeping purposes.

(one consultant)

Response. As noted above, the rule's applicability is determined by the terms of the agreement. The client can prevent issues arising over the rule's applicability by specifying in the agreement with the consultant that direct contacts with the Department with the intent to influence are not to be made.

43. *Comment.* The broad definitions of "financial assistance" and "management action" capture within their reach virtually all activities that constitute the *bona fide* practice of administrative law. It is essential that HUD narrow the definitions in order to

limit the applicability of the rule only to those unfair practices that Congress intended to reach.

(one law firm and one national association)

Response. Activities which constitute the *bona fide* practice of administrative law should be exempt from coverage of this rule under the exception for complying with HUD requirements or the exception for litigation. As discussed earlier, the concept of "fair" versus "unfair" is not within the statutory provisions regarding influence. The statute is directed at *influence*. There is no distinction made between "fair" and "unfair" influence.

44. *Comment.* The commenter requests that the rule expressly exclude the following from the definition of "financial assistance:"

a. Clarifying the meaning of a statute, regulation, rule, handbook, notice, or other departmental issuance, and determining its applicability to a proposed business plan or existing business practice of a party subject to such restrictions, including challenging legal or policy determinations by HUD irrespective of the likelihood of litigation;

Response. Categorical exclusions from the definition of "financial assistance," such as those suggested by the commenter, cannot be made. Each situation must be looked at to determine the intent behind the actions. Whether clarifying meanings, determining applicabilities, and challenging legal or policy determinations are "influencing" activities, and thus are subject to the coverage of this rule, depends on the intent behind those actions.

Purely informational inquiries, or requests to make purely ministerial changes, do not involve "influence," and, thus, are not covered by this rule. Also, contacts made with HUD pursuant to HUD conditions, requirements, or procedures, as discussed earlier, are not covered.

b. Seeking general approval of a person or entity to participate in HUD's mortgage insurance programs, as an approved mortgagee, or in GNMA's mortgage-backed security program, as an issuer, without regard to obtaining insurance or guarantee on a specific loan transaction;

Response. Seeking general approval to be an approved mortgagee in HUD's mortgage insurance programs may be covered by this rule. It is the Department's view that securing HUD approval as a mortgagee is part of the process by which such mortgagees secure financial assistance in the form of insurance. Therefore, communications relating to the mortgage approval

process may involve influencing activities.

The same reasoning applies to receiving approval as an issuer in GNMA's Mortgage-Backed Security Program, which guarantees privately issued securities backed by pools of federally insured and guaranteed mortgages. The guarantee that is afforded the investor enhances the value of the securities, thus, benefits the issuer.

c. Seeking specific approval of a party to transfer its property right in assets regulated by HUD to other eligible persons;

Response. This type of action may very well not be covered by this rule when it is initiated by an application in compliance with HUD requirements, such as those established at 24 CFR part 265, regarding the transfer of physical assets. However, the party seeking to purchase the property (assuming that the property, once transferred, will still be receiving some form of HUD assistance or insurance) may still be subject to the rule, to the extent that the party makes expenditures or enters into agreements for the purpose of influencing the Department's decision on the transfer of physical assets application.

d. Challenging the Department's legal determination that a loan is ineligible for payment, even in cases where an adverse determination is not reasonably anticipated to result in litigation;

Response. As noted earlier, there cannot be a categorical exclusion for this type of action. However, if such challenges are made pursuant to established HUD procedures, then they may be excepted under the exception for compliance with HUD requirements.

e. Commenting on proposed regulations, or promulgated mortgagee letters, handbooks, agency directives, notices, bulletins, and other such issuances.

Response. This type of action is not covered, if comments are submitted in compliance with HUD procedures for submission of comments. HUD's procedures on rulemaking include definite procedures for receiving comments from the public. Among other requirements, commenters are directed to send comments to the Rules Docket Clerk. If the comments are sent to the Secretary or other principal staff or other persons in the Department, then the action of submitting those comments would be covered by the rule, provided the comments relate to a specific award of financial assistance or management action and the person submitting those comments was retained to do so. This

would constitute an attempt to influence outside the established channel.

f. Seeking to encourage HUD to establish new (or modify existing) programs, procedures, rules and regulations of general applicability to the industry as a whole, including the undertaking of model programs or research and demonstration studies involving limited participants in order to test the feasibility thereof for general applicability.

Response. This action also is not covered so long as it is not aimed at a specific award or management action. Such actions are specifically provided for in the rule making process through a petition for rule making, and are not covered at all.

(one law firm and one national association)

45. *Comment.* The distinction between an award of financial assistance or taking a management action and an activity not covered by the rule is unclear. By rejecting rather than adopting such objective criteria as an application, a NOFA, or other formal "kick-off" to draw the line between covered and exempt activity, HUD inhibits any contact between itself and others. If HUD issues a notice or rule which changes a term in a contract, is the rule or notice a management action?

(one national organization)

Response. The commenter's approach of establishing an objective "kick-off" point for establishing the rule's coverage is inconsistent with the statute. The statutory "kick-off" is the intent of influence. This can occur at any time, whether or not a NOFA has been published or a management action initiated.

With regard to the commenter's question, a notice or rule may constitute a "management action." The test is whether the matter involves a change in the terms and conditions or status of the financial assistance involved. As noted earlier, rule makings provide an established procedure for accepting "influence" from the public—through the public comment process. Use of this procedure is beyond the reach of the rule. However, attempts to influence such a management action outside the established procedures are subject to the rule's requirements.

46. *Comment.* The definition of "management action" is inadequate and should specify actions that would directly influence assistance already awarded. Specifically,

a. Must the change be a direct (or indirect) result of the action?

Response. Whether the change is a direct or indirect result of the action is

irrelevant. What is critical is whether there was an intent to influence the Department through direct communication with a HUD officer or employee. Amendments, extensions, and renewals are changes to the status of financial assistance that may be subject to influence. As noted above, it is not possible to make categorical exclusions, since each activity will turn on the specific facts associated with that activity; specifically, whether there was an attempt to influence a specific award or management action.

b. Must the change occur within a specified time after the action?

Response. No. The intent to influence is the essential ingredient.

c. Must the assistance already be awarded to a person? If assistance is not yet awarded, may a person attempt to influence HUD actions that could affect the assistance once awarded?

(one national organization)

Response. In most cases, in order to constitute a management action, the assistance must already be awarded. Otherwise, the influencing action would most likely be considered an action to affect a decision with respect to the award. However, it is possible that a person may attempt to influence an action to be taken by the Department in anticipation of a future award. Each fact situation would have to be examined to determine the rule's applicability.

47. *Comment.* Query: A law firm representing a client with respect to general matters involving HUD might not provide its clients with details about its dealing with HUD. The client may never know of the specifics of the law firm's activities. Would a law firm employee qualify for the exception for regularly employed personnel with respect to the law firm's requirement to maintain records and report, but not with respect to the client's requirement?

(one consultant)

Response. The responsibility of the client under this rule does not extend beyond that which he or she has at the time of an agreement with the law firm, including any later changes to the agreement. The client cannot be held accountable for undisclosed activities carried out by the law firm that were not a part of the agreement between the client and the law firm.

The exception for regularly employed personnel is afforded only to employees of the person requesting or receiving the assistance—not to the person providing the influence. If the commenter is concerned about having to keep records and make reports on the activities of staff attorneys, this requirement has

been relaxed somewhat for entities, including law firms, as discussed earlier in this *Public Comment* section, under the discussion regarding the definition of "person."

48. *Comment.* There is not a clear definition of what constitutes a HUD requirement. What standards are imposed to establish that there was some sort of imposition by an officer or employee of the Department? Where lies the burden of proof?

When a lender responds to a HUD report of a review of its servicing activities, is it attempting to influence a HUD management decision, albeit that it is responding to a HUD report that invites comment complying with conditions, requirements, or procedures?

(one consultant and one law firm)

Response. A condition, requirement, or procedure that is imposed by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability or an application document) constitutes a HUD requirement. A condition, requirement, or procedure imposed by an officer or employee of the Department also constitutes a HUD requirement. The Department specifically asked for comments on this exception. Based on the types of questions raised by this commenter and other commenters, the final rule contains examples regarding the appropriateness of use of this exception.

Procedural questions, such as the burden of proof and the standard of proof, are being handled in a separate rule making that implements not only section 112, but also several other sections of the HUD Reform Act that authorize the Department to impose civil money penalties. At § 86.35(b)(4), the reader is referred to paragraphs (g) and (h) of § 30.710 of the proposed rule published on September 10, 1990, at 55 FR 37290.

A lender's responses to a HUD report of a review of its servicing activities is not covered by this rule, when the HUD report invites comment. This is in compliance with HUD requirements.

49. *Comment.* The word "retained" is not defined in the rule.

(one law firm)

Response. The proposed rule did contain a definition of "retained" in § 86.15. However, that definition has been revised to accommodate the change described above to permit entities that are retained to provide lobbying services to be treated as one "person" for purposes of the rule.

50. *Comment.* The definition of "influence" is very broad. Can this mean

that if a local official places a telephone call, writes a letter or pays a courtesy visit to a Federal official to seek information about a particular grant, this would automatically trigger coverage?

(one national organization)

Response. Not necessarily. Inquiries seeking information are not covered. However, if the informational inquiry becomes an attempt to influence, then coverage is triggered, unless the official is an excepted official of the State or municipality, as discussed later in this *Public Comment* section.

51. *Comment.* The definition of influence with the word "any" is so broad that virtually every inquiry is suspect, especially when there is no definition of an exempt inquiry. The word "any" should be changed to "a specific" and a specific list of exemptions should be identified along with a definition of inquiry.

(one national organization)

The rule should have narrower definitions of "influence" and "inquiry", with specific exemptions for government officials.

(two State organizations and one national organization)

Response. As discussed earlier in this *Public Comment* section, the definition of "influence" has been revised to cross-reference to the exception for compliance with HUD conditions, requirements, and procedures; litigation; and the activities of certain State and local officials. Also, the definition excludes status and informational inquiries, and requests for purely ministerial changes by the Department.

Use of the term "any" in connection with an award of assistance or a management action is correct in the definition, in that it follows the exact language of the statute.

There is no definition of "inquiry," nor does the Department see the need for one. There can be no general exemption for government officials, because they are "persons" as defined by the statute, and are subject to the requirements of this rule, unless they meet the exception for State and local government officials, as discussed later in this *Public Comment* section.

52. *Comment.* The definition of "reasonable compensation" is meaningless if the employee only performs HUD-related work.

(one law firm)

Response. The commenter's point is well taken. Where an employee only performs HUD-related work, it will be necessary to look at similar duties and responsibilities of others employed in

similar circumstances in judging what is reasonable compensation. The definition of "reasonable compensation" at § 86.15 has been changed to add this requirement.

53. *Comment.* A "knowledge" standard should be added to § 86.20(a)(1), relating to general coverage issues.

(one law firm)

Response. The Department does not believe that the Congress intended to use a "knowledge" standard in reference to making an expenditure, or entering into an agreement to make an expenditure, to influence a HUD decision. The standard was placed in the *Penalties* section (section 13(d)(1)), where it is critical whether a person knowingly failed to follow the record keeping, registration, and reporting requirements. Congress' failure to apply a "knowledge" standard to the remainder of section 13 signals, in the Department's view, an intent to limit its use to section 13's penalties.

F. Communication

54. *Comment.* Commenters urge that coverage be limited to direct communication with officers or employees having known roles in the decision-making process, or that a list of covered employees" (e.g., Directors of Housing in the Field Offices, and their superiors, but not working staff) be made available. Not every HUD employee should be part of the test as to "contact with decision makers." Secretaries or staff appraisers should not be considered "decision makers." The point would have pertinence only if the communication to the secretary was the only communication with an intent to influence made by the consultant to any officer or employee of the Department. Persons retained to influence know who are persons in the decision-making process and manage to communicate directly with them.

(four law firms)

Commenters recommend that coverage be triggered by direct or indirect communication to any officer or employee of the Department who makes preliminary or final decisions or recommendations with respect to awards of financial assistance or changes in the terms of financial assistance.

Response. The proposed rule contained the following discussion of this issue:

(5) *Covered lobbying.* Section 13(a)(1) of the HUD Act covers expenditures designed to influence—the decision of any officer or employee of the Department, through

communication with such officer or employee

This provision could be construed to reach a number of situations, including:

- The final "decision maker" (generally an Assistant Secretary) for each award of assistance or management action, with section 13 triggered only when influence is applied through *direct* communication with that person.
- The final "decision maker," with section 13 triggered by communication *directly* with that person, or *indirectly* with that person through other persons inside or outside the Department.
- Any officer or employee of the Department who makes "decisions" (preliminary decisions, recommendations, etc.) with regard to the assistance or management action, as it moves through the "decision making process," with section 13 triggered only when influence is applied through *direct* communication with that person.
- Any officer or employee of the Department who makes "decisions" (preliminary decisions, recommendations, etc.) with regard to the assistance or management action as it moves through the "decision making process," with section 13 triggered by communication *directly* with that person, or *indirectly* with that person through other persons inside or outside the Department.
- Any officer or employee of the Department, whether or not in "the decision making process," with section 13 triggered only when influence is applied through *direct* communication with that person.

The Department believes that the final reading is most appropriate. The Department believes that the first two interpretations are too narrow, and ignore the fact that the decision making process can be a long one, in which a potentially large number of individuals make a host of preliminary decisions that may never reach the review of the ultimate decision maker.

The third and fourth possibilities recognize the dynamic nature of the Department's decision making process. However, they put the public at its peril. The "decision making process" and its participants change with each assistance and management action, and even with given phases of an action. Such ambiguity would put the public in the position of trying at each turn to identify those who may be in the decision making process, with potential civil money penalties awaiting a wrong judgment. This "hide and seek" situation would also prevent full compliance with, and enforcement of, section 13's requirements.

The final approach recognizes *both* the realities of the decision making process and provides a relatively "bright line" for both the Department and the public. The "decision" of the employee or officer need not be related to the award of assistance or the management action. It may be a more immediate decision: what is the officer or employee's judgment of the subject of the lobbying—a decision that may be transmitted to others who actually are in the decision making process? Thus, the rule provides that section 13 covers attempts to influence a decision of the Department

with respect to the award of any financial assistance or the taking of any management action, through direct communication with any officer or employee of the Department. (All emphases in original)

The commenters raise options three and four, respectively, that were discussed in the Preamble to the proposed rule. The Department has reviewed this issue in light of the comments, and continues to believe that the approach reflected in the proposed rule is the most appropriate.

In addition, the Department agrees with the commenter that those retained to influence the Department's decision regarding financial assistance or management actions are likely to know the "key players" for the Department. In one sense, this addresses the commenter's concern about the potentially large number of HUD employees who might trigger the rule's requirements: the "other staff" generally will not be targets of influence. On the other hand, the Department believes that these HUD employees may well be in a position to influence a decision, and that attempts to influence a decision through them should also be within the rule's purview.

55. *Comment.* Coverage should be limited to direct communication by and in the name of the individual required to register or to be named in a firm's registration. Sources of influence on Department officers and employees who are unknown even to the officers and employees being influenced would seem to be outside the focus of Congress. This refers to two versions of an example in Appendix A to the proposed rule relating to a narrative transmittal letter for a TPA application prepared and signed by an attorney in the first version but signed by the client in the second version.

The first version of the example states that the transmittal letter does not trigger coverage because its submission is necessary to comply with HUD requirements. The second version of the example, however, states that the lawyer must comply with the rule, even though his name doesn't appear in the submission, because the rule applies to—

any person who attempts to influence the Department's decision making through direct communication with a HUD officer or employee. The inquiry is substantive—who is attempting to exert influence—rather than procedural—who signed the document. (one law firm and one consultant)

Response. The commenter makes a good point: the rule only reaches those who attempt to influence the Department through direct

communication. If the letter in the example is prepared by the lawyer, but returned to the client for the client's signature, and there is no reference made to the lawyer, then the lawyer is not covered. However, if the lawyer's association in the case is directly communicated to the Department, then there is coverage.

In other words, if the lawyer allows his name to be used in the cover letter, then the lawyer, as well as the client, is covered by this rule (provided, of course, the submission is not excepted as a HUD requirement). The examples referred to above have been revised.

56. *Comment.* Query: Why isn't the language "through direct communication with any officer or employee of the Department" contained in § 86.25, as it is in § 86.20?

(one law firm)

Response. Section 86.25 has been revised to add this phrase.

G. \$10,000 Threshold

57. *Comment.* The commenter maintains that he is engaged to intercede with HUD officials when there are differences of opinion over interpretations of HUD rules, and that he receives approximately \$5,000 a year total for this type of service. (Approximately 100 contacts made each year with approximately 15 minutes for each contact.) He questions the cost-effectiveness of the rule when applied to relatively insignificant matters such as this.

(one consultant)

Response. The statute is very clear on this point. The person retained to influence must register within 14 days of being retained. In the case of this commenter, registration is required for each of the engagements; however, annual reporting is not required, as long as the commenter does not reach the \$10,000 threshold.

58. *Comment.* Registration should not be required unless a reasonable threshold for a single action (e.g., \$1,000) is paid. The rule might substitute a general registration requirement, under which someone whose fees are typically less than the \$1,000 per assignment threshold would register annually with HUD, rather than at the time of each individual agreement, unless that agreement contemplated payment exceeding the \$1,000 threshold.

(one consultant)

Response. The statute is also very clear on this point. There is no threshold that must be met in order to require registration. Registration is required within 14 days of being retained,

regardless of the amount of the payment or consideration of the agreement.

59. *Comment.* The commenter believes that the \$10,000 total per year requirement thwarts clear Congressional intent that only substantial fees (those in excess of \$10,000) per issue be reported. Congress created a *de minimis* exception so that large fees would be reported, and, thus, easily identified. Section 86.25(c)(2) is unclear, but the examples in Appendix A support the Department's interpretation. Does the Department want every taxicab, tuna sandwich, and telephone call included?

(three law firms)

The \$10,000 minimum exception to reporting requirements for those paid to influence is for attempting to influence a decision. This is different from the rule's reporting requirements for those paying to influence a decision, for whom the requirements apply if total expenditures are \$10,000 or more.

(one national association and one state organization)

Response. Section 13(c)(2) states that the reporting requirements applicable to those receiving payment for lobbying services—

shall not apply with respect to any calendar year to any person whose total compensation for attempting to influence a decision * * * is less than \$10,000 in such year.

Viewed alone, this provision could be interpreted as placing a "per case" dollar threshold on registrants. The Department does not believe, however, that the language compels such a result and that the rest of the statute and its intent counsel the opposite conclusion: That the threshold is cumulative of all cases during the reporting year.

Initially, the commenter's position requires that the word "a" in section 13(c)(2) be read to mean "each" or "a specific." The Department believes that this is too hard a reading. "A" can as easily be read in the generic sense, unrelated to specific cases, as in, "How much was received for influencing a decision of the Department during the year?" Thus, "a" can as comfortably be read as meaning "any," as "each."

In addition, section 13(b)(3) states that the reporting requirements applicable to those making expenditures "shall not apply to any person whose total expenditures * * * are less than \$10,000 in any calendar year." This is clearly a cumulative requirement. As noted earlier, the Department believes that section 13 envisions a "two-party" expenditure/receipt approach, under which the reports of the two parties could be compared and cross-checked.

The reading offered by the commenter would be inconsistent with this approach.

Further, to permit such a discrepancy would open the door to the kind of manipulation of receipts that would defeat the very purposes of the statute. Conceivably, agreements could be made, under which a registrant would receive no more than \$9,999 for each agreement, which in fact could be a division of a larger agreement so that multiple agreements (at \$9,999 each) would collectively amount to a great deal of money spent on a common effort.

With regard to the commenter's question about what registrants must report, section 13(c)(1) requires each registrant to file—

a detailed report of all money received and expended by the registrant during the preceding year in carrying out the work, including information as to whom money was paid and for what purposes.

The Department believes that the registrant must report on *all amounts received pursuant to the retaining agreement with respect to the lobbying activity*. On the receipt side, the statute reaches "all money received * * * in carrying out the work * * *." In the Department's view, the amounts agreed upon in the agreement define the "work" to be carried out—they are the amounts that comprise the overall lobbying effort. This includes amounts *directly* related to the lobbying activities (such as the preparation of documents), as well as amounts *indirectly* related (such as travel and accommodation expenses). Direct or indirect, the agreed-upon amounts define the lobbying job.

The statute also requires registrants to report on "all money * * * expended * * * in carrying out the work * * *." If the agreement comprises the total "work" involved, the expenditures should have the same coverage: they must cover all amounts expended in pursuit of that "work."

Thus, the Department believes that the registrant must report on all amounts provided in the retaining agreement for the lobbying activities involved. All amounts *received*, and all amounts *expended*, under the agreement during the reporting year must be reported. Each side of the ledger—receiving and expending—should total the same amounts.

The Department believes that this approach is preferable. First, it is clear. If amounts are provided in the agreement, they must be accounted for by the registrant. The other possible approach—making case-by-case decisions on whether individual receipts or expenditures are covered—would

involve endless argument about the relation of the amount to the lobbying effort. The resulting confusion would burden both the public and the Department, and would hamper enforcement of the statute.

Second, the approach is consistent with the two-party scenario. The Department will be able in many cases to cross-check receipts and expenditures and will, to that extent, be better empowered to enforce the rule's requirements.

Third, it removes the temptation to put true lobbying costs into categories that would arguably not be part of the covered "work." For example, the parties to the transaction could agree to shift lobbying expenses into a "personal expense account" that would not be reported. This would encourage inappropriate reporting, and frustrate enforcement of the statute.

On a related matter, the Department wishes to clarify one point regarding the rule's reporting requirements. Sections 13(b)(1) (expenditure reporting) and section (c)(1) (registrant reporting) require reports to be filed with respect to activities carried out "during" the reporting year. The Department believes that this language can be best effectuated by treating each year separately for reporting purposes, rather than requiring the submission of updates to a previously filed report to reflect subsequent events. Therefore, the final rule contains the following guidance:

- The entire amount contained in the original agreement must be reported in the year in which the agreement is executed, even if the amounts are not paid at that time or are to be paid after the reporting period.
- Expenditures that are made during the reporting period pursuant to the agreement that are *in excess of* the amount in the agreement must be included for reporting purposes during the reporting period.
- Where amounts are paid after the close of the reporting period, but were not contemplated by the original agreement, they are reportable for the year in which they are incurred.

The Department intends to closely monitor reporting patterns under the rule, to ensure that this separate reporting year approach is not subject to abuse.

60. *Comment.* Some items do not have a value that "can be determined as of the date of expenditure." The final rule should state that items that cannot be valued need simply be listed, with a good faith determination as to whether the reporting organization has climbed over the \$10,000 threshold.

(one law firm)

The final rule should allow the valuation to be determined by reference to a range of values where no objective standard is obtainable. It should make clear that, under no circumstances will an appraisal be required in order to establish value in circumstances where expenditures are simply not susceptible to precise valuation as of the date made. For example, payment for services may take the form of an ownership interest in the subject property, and the value of the property may be greatly influenced by whether the requested financial assistance or management action is granted by the Department.

(one national association)

Requiring consultants to value interests negotiated in lieu of cash payments imposes undue hardship on them, and should be done only when the ownership share is directly related solely to the delivery of some number of apartments of Federal subsidy, and in no other case. Ownership interests can seldom be quantified, but are rather thought of as a range of values depending upon the results.

(one consulting firm)

Response. Section 13(a)(2) states that "each person * * * shall keep a *detailed and exact* account of *all* such expenditures * * *." Section 13(a)(3) states that "each person making such an expenditure shall obtain a *bill, stating the particulars, for every such expenditure*, and shall retain all records * * * for not less than the 2-year period beginning on the date of the filing of the report required * * * which shall include * * *" *all* such expenditures. Section 13(b)(1) states that "each person making an expenditure * * * shall file * * * a report specifying the *total* expenditures made * * * during the year * * *." Section 13(b)(3) states that the reporting requirements "shall not apply to any person whose *total* expenditures * * * are less than \$10,000 in any calendar year." (All above emphases are supplied.)

All of the above statutory provisions indicate that Congress intended that a value certain be placed on each and every expenditure made to influence the decision of the Department. It is clear that listing without valuation, good faith determinations, and using ranges of values will not comply with these provisions. Sections 13 (a)(2) and (a)(3) indicate that valuations should be made at the time the agreement is made. Sections 13 (b)(1) and (b)(3) indicate that a definite value is needed at the time of reporting. Anything less than definite

valuations would violate these requirements.

The Department does not believe that many situations will arise in which an appraisal will be required. If, however, there are no other means reasonably designed to produce a fair and accurate valuation, an appraisal will be required.

The Preamble to the proposed rule, as well as the examples in the final rule, contain considerable guidance as to how valuation may be determined when the transaction involved does not involve cash. Generally, the valuation rules accord those involved in lobbying activities considerable freedom in the choice of methods of valuing non-cash monetary expenditures.

"Reasonableness" is the standard, and all valuations are subject to review by the Department.

With regard to the example in which payment for services may take the form of an ownership interest in the property, it is the value of the agreement that must be determined. What is the agreement worth at the time of the agreement? Increases in the valuation of the agreement are subject to reporting in the same reporting year or in a later reporting year, as appropriate.

H. Exception for Litigation and Pre-Litigation Activities

61. *Comment.* To prescribe that only a matter in which an attorney has been engaged is one that "could reasonably be expected to result in litigation" is a self-serving action on the part of the attorneys writing the rule. Many matters involving differences of opinion between HUD staff and program participants are potential subjects of litigation, but the retention of counsel is not always a necessity to resolving those differences. Non-attorneys should be included whenever there is a reasonable prospect that litigation will result. This restriction gives an unfair business advantage to law firms.

(one consultant)

The commenter questions the Department's exclusion from the pre-litigation exception of services performed pursuant to a "general retainer." Is "general retainer" intended to include any ongoing lawyer-client relationship that antedates the issue in question, or does it refer only to arrangements under which a firm is compensated on a periodic basis at a fixed amount without regard to the volume of services performed during the period?

The commenter suggests that "retaining" is equal to "paying for" and that any arrangement with any counsel, whether or not previously retained,

under which the client's expense would be increased because of the additional work required for the particular issue should be sufficient to satisfy the Department's concern. The existence of fixed-amount retainers for clients directly interested in particular awards of financial assistance or particular management actions is so limited as to not warrant being the basis of a troublesome exclusion.

(two law firms and one national association)

Neither the rule nor Appendix A gives adequate guidance as to what constitutes pre-litigation matters.

(one law firm)

"Pre-litigation" is not, and cannot be, tightly defined. HUD should give the person making the expenditure the benefit of the doubt in making such a determination.

(one national association)

Response. In the Preamble to the proposed rule, the Department expressed its concern about the possible abuse of an exception for pre-litigation activities, and requested comments on ways to ensure that the pre-litigation exception would be limited to activities in furtherance of genuine issues with real litigation potential. The Preamble indicated that litigation is a virtually omnipresent option—almost every issue that a lawyer handles gives rise to some degree of litigation potential—and expressed concern that, unchecked, the pre-litigation exception could swallow up the rule as it applies to lawyers.

As evidenced by the public comments received, the commenters did not help resolve any of the Department's specific concerns. We have re-examined this issue and concluded that the merits of permitting an exception for pre-litigation activities are outweighed by the possibility of abuse. Therefore, §§ 86.20(e) and 86.25(e) have been revised to remove the proposed exception.⁴ The reader is reminded, however, that in many instances, so-called pre-litigation activities may still be excepted from coverage on the basis that they are being carried out in response to HUD requirements.

I. Issues Specific to Mortgage Insurance

62. *Comment.* Specific provisions should be included in the final rule to exempt preparation of the documentation for multifamily loan closings under the mortgage insurance and 202 programs, preparation and the

documentation for transfers of physical assets, and review and preparation of plans of action under the Emergency Low Income Housing Preservation Act of 1987. The reporting requirements of the rule would do nothing more than create additional paperwork under these programs.

The rule fails to recognize that the HUD mortgage insurance and direct loan programs were never designed to be self-executing. These programs have always been implemented through the use of private sector professionals, including attorneys, architects, consultants, and mortgage bankers, many of whom were previously employed by the Department at the staff level. These programs cannot continue to function without this type of professional assistance being available, and this type of professional activity should not be construed as lobbying or influencing management actions or the award of financial assistance.

(one law firm)

Any action taken by an attorney engaged to close a project loan or an insured loan commitment should not be covered by the rule, since the professional legal services would be the representation of a client in the initial closing, construction phase, final closing, and in any mortgage increase applications, subsequent TPA application, and workout request. While TPA applications and mortgage increase applications require management action by the Department, the requirements, rules, and procedures are imposed by HUD Handbooks and HUD regulations. Otherwise, because of the ambiguities in the rule, virtually every lawyer engaged in the HUD practice area would be required to register, maintain records, and submit reports to HUD when engaged to represent clients in insured loan closings, TPAs, mortgage increases, and workouts, in order to assure themselves that they are not in violation of the rule despite its contravention of the statute.

The substantial additional time required to satisfy the record keeping and reporting would result in increased fees to clients, increased costs to the project, and would add to the avalanche of paperwork HUD would have to monitor.

(two law firms)

Response. More than likely many of the types of professional assistance described above will not be subject to the rule, since they meet the requirements for the exception for compliance with HUD requirements and

⁴ The pre-litigation exception contained in the proposed rule was not derived from the statute. It represented an exercise of agency discretion only. Its deletion in the final rule raises no legal issue.

may not involve contact with HUD. To the extent the above-described activities do not meet the requirements for the exception, the statute is clear: the persons engaged in those activities will have to comply with the record keeping, registration, and reporting requirements of the rule. As noted earlier, the Department believes that the myriad factual situations in which the examples raised by the commenters can arise argue against *a priori* exclusions of classes or categories of situations from the rule's coverage.

63. *Comment.* The commenter recommends that HUD exempt from both the reporting and registration requirements all negotiations regarding the restructuring or recapitalization of mortgages in default, or reasonably believed to be in danger of default.

(one consulting firm)

FHA fully insured multifamily initial and final endorsements should be excluded from coverage, since both types of transactions involve predominantly the compliance by private parties with applicable HUD requirements.

(one law firm)

Response. It is inadvisable to make categorical exclusions from the reporting and registration requirements, because each action must be looked at individually. If the action is taken in compliance with HUD requirements, then it meets the exception.

64. *Comment.* More examples are needed in Appendix A to illustrate various scenarios involving mortgage insurance cases. More clarity is needed regarding what kinds of activities might be perceived as "management actions" with respect to insuring and servicing insured cases and in claiming related insurance benefits. Is any communication with a HUD official that effectively requests HUD to take a particular action (or non-action) on an individual case sufficient for coverage?

(one consultant firm)

Response. The reader is reminded that the rule covers expenditures and agreements, and communications are important, for purposes of this rule, only if they are made as a result of an expenditure or agreement to influence a departmental decision.

In response to this comment, examples have been added to clarify the kinds of activities that might be considered, with regard to mortgage insurance activities, management actions or activities in compliance with HUD requirements.

Also, "mortgagee letter" has been added to §§ 86.20(d)(2)(i) and

86.25(d)(2)(i) as a type of written instruction that would qualify as a HUD requirement.

J. Issues Specific to State and Local Government Employees

65. *Comment.* Subjecting mayors and other local government officials to the complicated requirements proposed in this rule was certainly not the intent of the HUD Reform Act. Mayors and other State and local officials should be exempt from the registration and the reporting requirements of the proposed rule. The administrative burden of tracking a city's expenditures, by employee, would be reason alone for exempting cities. Also, it would be ridiculous for a mayor to have to make a report every time a commonplace contact is made with HUD.

In addition, in the context of intergovernmental relations, the rule is an onerous impediment to the legitimate functions of local government, which include unfettered contact with Federal departments and agencies.

Associations should be exempt also. Rarely does an association involve itself in such sustained contact with HUD officials or employees to influence decisions on behalf of individual members on particular projects.

(six national associations, two municipal organizations, and one State organization)

Local agencies should be considered in the same category as regularly employed personnel.

(one national association)

Response. The Department recognizes the burdens associated with subjecting mayors and other State and local government officials to the requirements of the rule. Therefore, in response to the comments received on this issue, the final rule contains an exception from all Part 86' requirements for the following categories of State and local government officials:

- All elected officials of State and local government.
- The political appointees who serve on the personal staffs of State and local elected officials, such as Executive Assistants and Special Assistants.
- All full-time, appointed officials—political appointees or otherwise—of State and local government who serve in policy-level positions. These individuals include State and local cabinet officials, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or

for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbents execute policy set by others. The Department expects that the number of individuals who qualify for this exception will be relatively small.

Because *elected* officials are elected to their positions, it is reasonable to view them as the representatives of the State or local government. They stand in the shoes of the people of the State (or local government), when they carry out their duties and functions, and in that sense, are indistinguishable from the State or local government. Their relationship with the State or local government is the physical representation of the will of the people, and their activities, as would be covered by this rule, are tantamount to "solo" lobbying. As such, actions taken by these officials *on behalf of the State or local government* will not be subject to the requirements of the rule.

The exceptions for the personal staffs of elected State and local officials, as well as for the full-time, appointed officials who serve at a policy level in State or local government are based on a similar rationale. These appointees, in their official capacities, act solely on behalf of their superiors in the public interest, and should be treated in the same fashion as the elected officials.

A new paragraph (f) has been added to § 86.20, as well as to § 86.25, to set out this exception.

This exception does not extend to other State and local officers or employees. These individuals are officers and employees of the jurisdiction, and like their private sector counterparts, are distinguishable from the entity they serve.

The commenter asserts that rarely does an association involve itself in sustained contact with HUD. The commenter is reminded that the rule applies to all efforts to influence the decision of the Department in the award of financial assistance and the taking of a management action. If a contact meets the prerequisites for coverage, it is irrelevant whether the contact is sustained.

Associations may, however, come within the rule's requirements less often than other individuals and entities doing business with the Department. As discussed earlier, the rule only applies in the case of a *specific* award of assistance or management action. This means that general membership dues and other general contributions to the association are not considered "expenditures" for purposes of the rule:

they are not provided in connection with a specific award of assistance.⁵ Representation with respect to general issues—such as general funding levels for HUD programs and matters of general tax policy—would not come within part 86.

Finally, State and local agencies can qualify for the regularly employed personnel exception, if their employees meet the definition of "regularly employed," as stated in § 86.15.

66. *Comment.* Queries regarding registration requirements and city officials and employees:

- Must the registration be done annually?
- Within 14 days of each contact with HUD?
- Within 14 days of each and every contact with HUD that could be interpreted as "influencing"?

Annual registration by regular state and local employees is sufficient.

(one national association)

Response. The statute is very clear on this point. Registration is required within 14 days of being retained. Those State and local government employees who do not come within the special interpretation being provided to officials will be required to register within 14 days of their retention for influencing purposes (or within 14 days of when they are assigned the duties that entail communication with HUD officers or employees for the purpose of influencing a HUD decision).

67. *Comment.* The rule would penalize city and State governmental representatives who wish to support the applications of nonprofits in their communities, or conversely, nonprofits that support public agency applications. There seems to be no logical justification for differential treatment of those who lobby on behalf of others. Full-time salaried staff of public and private nonprofits should be exempted from registration and disclosure requirements if they lobby on behalf of other nonprofits, or State or local governments, so long as there is no fee-for-service or consultant fee paid by the applicant nonprofit or government.

(one national association)

Response. The rule extends coverage only where there is an expenditure or agreement made. It is probable that the situation described above would not be

covered on the basis that no expenditure was made. It should be noted, however, that receipt of a fee is not a prerequisite to coverage by the rule. The receipt of anything of value—monetary or non-monetary—is adequate to trigger the rule's requirements.

K. Paperwork Burden

68. *Comment.* The information collection estimates in the Preamble appear to be substantially understated. It would seem that the quantity of applications for such programs as 202 Elderly Housing, HUD/FHA multifamily mortgage insurance, single family PUDs, Section 8 assistance, and other programs in the "award" status, not to mention subsequent management decisions, must be two or three times the estimate.

(two law firms)

Response. In light of the many comments received stressing that lobbying is not a frequent activity, the Department believes that its estimates may be very close to reality. In any case, the changes made to the rule because of the comments submitted reduce even more the burden hours associated with the record keeping, registration, and reporting requirements of this rule.

69. *Comment.* The paperwork burden will be substantial and hardly consistent with the general mandate of the Paperwork Reduction Act. The person making an expenditure on any particular award will have to determine (continually during the course of the year) how many different recipients (lawyers, consultants, mortgage lenders, architects, managing agents, or other persons) are covered or appear to be covered by the rule. This will surely be in excess of one hour. The forms will need to be prepared with a great deal of attention to accuracy, given the penalties for failure to properly file the appropriate forms.

Also, the one-hour estimate for the person being retained is unrealistic. There may be multiple "retainers" with the same people during the course of the year, necessitating the filing of a new or updated registration form in connection with each lobbying effort, albeit on the same case but with different HUD staff or on different issues. To the extent that the recipient of the expenditure, or an employee, needs to keep more extensive records than would otherwise be the case, the reporting burden is substantial. For example, it will be very time consuming and very difficult for a lawyer to allocate the service time between what are normal legal services

as opposed to what HUD might determine to be lobbying activities. (two law firms)

Response. The persons making the expenditure are only responsible for keeping records on the persons that they retain. They are not responsible for subsequent consultants retained. In addition, they need only report on the transaction that they initiated. In the case of registrants, they may have multiple retainers to report.⁶ In light of the specific information required, it would be expedient (though not required) to keep up-to-date records as the year proceeds.

In keeping with the government-wide desire to contain paperwork, the forms needed to comply with this rule require only the information required to carry out the intent of the statute. Every attempt has been made to make these forms simple and relatively easy to complete. Someone having to do multiple forms should have no problems, if his or her record keeping has been kept up-to-date during the year.

70. *Comment.* The commenter estimates that he will be required to register about 100 times a year. Does the Department really want this kind of paperwork burden? Was the Office of Management and Budget informed of it under the Paperwork Reduction Act?

(one consultant)

Response. The Office of Management and Budget (OMB) is fully aware of the forms and paperwork burdens associated with this rule. In fact, the Department would not be able to issue these forms if they had not received the appropriate OMB approval. The Department is prepared to handle all of the paperwork called for by this rule.

L. Regulatory Flexibility Impact

A Final Regulatory Flexibility Analysis appears later in this Preamble. Comments 71 through 75, and their responses, are incorporated into the Analysis.

M. Federalism Impact

76. *Comment.* To say that this rule does not have federal implications under Executive Order 12612 is erroneous. The effect on State and local

⁵ Of course, if the association uses general membership dues to make a covered expenditure, the record keeping, reporting, and registration requirements apply. In addition, if the payment to the association is for the purpose of obtaining lobbying services for a specific award or management action, the rule applies.

⁶ The commenter's point appears premised in part on the belief that the rule's registration requirements are triggered by each contact with the Department and each issue discussed, albeit "on the same case." As noted earlier, the determinative issue with regard to registration is the scope of the agreement retaining the person. The parties to the transaction can directly affect their administrative burdens in a case by the relative narrowness or breadth of the agreement.

governments and their employees would be substantial and direct. They can be expected to lobby strenuously to convince HUD that their positions are sound.

(one consultant)

Response. The Department agrees that the effects of the rule are *direct*: State and local governments will have additional reporting and record keeping responsibilities as a direct result of the rule's requirements. The Department continues to believe, however, that the rule will not have a *substantial* effect on State and local governments.

The rule does not intrude upon the sovereignty of State or local governments. It does not affect the *substantive* communications of State and local governments with the Department: It only provides *procedures* for handling covered communications. As noted above, the Department does not believe that the administrative—record keeping, reporting, and registration—burdens imposed by the rule are significant. This is particularly so in light of the changes made in the final rule to lessen the administrative burden of those subject to the rule's requirements. As discussed earlier, several of these changes specifically relieved burdens on State and local governments contained in the proposed rule; and one specifically excluded certain State and local government officials from the rule's coverage.

Finally, the rule involves the exercise of little discretion on the Department's part: It imposes the minimum burdens necessary to carry out the statutory mandate. Accordingly, further review under the Executive Order would not be appropriate, even if the effects on State and local governments were substantial.

N. Limitations on Fees to Consultants

77. Comment. The rule does not address current patterns of compensation. It ignores the simple fact that some organizations cannot afford to pay substantial fees, except on a contingent basis. It ignores certain necessary informal arrangements (e.g., deferring payment until the next deal) that have nothing to do with attempting to influence HUD.

(one law firm)

Response. Section 13(a)(4) contains the statutory language on limitation of fees to consultants. The proposed rule generally followed the statutory language, with little elaboration. Several commenters have asked for guidance on the scope and meaning of the provision.

—*Relationships covered.* Section

13(a)(4) clearly covers situations in

which one person hires an outside party to perform lobbying activities. The Department believes that it also reaches situations in which an entity pays a partner, associate, or other officer or employee of the entity to influence the award of HUD assistance. This could occur in two circumstances: First, where the entity wants to lobby HUD, and calls upon its people to do the work; and second, where an entity is retained to provide the services, and uses its people to carry out the activities. In either of these circumstances, section 13(a)(4)'s prohibitions on percentage and contingency arrangements apply to the consideration passing between the entity and its officers and employees.

This interpretation is not inconsistent with the special treatment (discussed earlier) for entities that are retained to provide lobbying services under section 13(c). Under this approach (as discussed earlier), the entity's people need not register and report separate and apart from the entity. They are treated as one "person" for purposes of section 13(c). As discussed earlier, this interpretation is a permissible—although not a required—reading of the statute, that was adopted specifically because it allowed the Department to obtain all the information it needs, without unduly burdening lobbying entities.

The Department does not believe that this approach is appropriate in the context of section 13(a)(4). Indeed, it would give a "green light" to the very practices—percentage and contingency arrangements—that section 13(a)(4) is designed to prevent. Given this deleterious effect, the Department will not extend the "one person" interpretation to section 13(a)(4).

It should be noted that section 13(a)(4)'s prohibition only covers situations in which the contingency or other arrangement is tied to a specific award of assistance. Partner shares and bonuses that are calculated on a general basis, not tied to a specific assistance award, do not violate section 13(a)(4).

—*Direct or indirect influence.* The other provisions of Part 86 require *direct* communication with the Department as a condition of applicability. Thus, § 86.20 (requirements of persons making expenditures) applies to expenditures to influence the decision of any HUD officer or employee, through direct communication with the officer or employee. Section 86.25 (requirements of persons receiving payment) contains the same coverage for the lobbyist retained to exert the influence. Section 13(a)(4), however, is

silent on whether the communication with a HUD employee must be *direct*.

The Department believes justified in adopting a narrow approach, along the lines of that used in §§ 86.20 and 86.25. Accordingly, the final rule *extends coverage only to direct communication* with HUD employees or officials. Percentage and contingency arrangements for activities that do not involve direct communication with HUD—such as the preparation of documents, and technical advice and assistance—would not be subject to section 13(a)(4)'s prohibitions.

The remainder of the statute makes clear that only *direct* communication is to be regulated. The Department sees no problem of extending the same coverage here. In doing so, the Department is not unmindful (as the commenters suggested) that procuring technical advice and assistance (*indirect* communication) is an accepted, and sometimes necessary, way of participating in the Department's programs.

—*Exception.* Section 13(a)(1) contains an exception for compliance with HUD requirements and procedures. Because the Department recognizes that some organizations cannot afford to pay substantial fees except on a contingency basis and, therefore, does not wish to unduly disrupt current patterns of compensation, the final rule extends the exception to consultants under section 13(a)(4), and permits their fees to be contingent when they are incurred for activities in compliance with HUD requirements. (See § 86.50(b).)

This approach is consistent with other provisions of the rule where the exception for compliance with HUD requirements is afforded to persons making expenditures to obtain lobbying services, as well as to persons engaged to provide lobbying services (i.e., §§ 86.20 and 86.25, respectively). Because actions taken in compliance with HUD requirements are taken through prescribed channels, the Department believes that the likelihood of abuse is slim. Accordingly, the term "influence," as defined in § 86.15, does not include actions taken in compliance with HUD requirements, as stated in §§ 86.20(d), 86.25(d), and 86.50(b). Fees—whether contingent or not—received for actions taken in compliance with HUD requirements are not prohibited.

The exception for litigation activities is not applied here, since it is unlikely that efforts to influence the award or

allocation of assistance will involve litigation activities.

— *Management actions not covered.*

Section 13(a)(4) only applies to the award or allocation of assistance, not to management actions. Section 86.50 has been revised to reflect this clarification, and appropriate examples have been added to the Appendix A.

One additional point should be noted. For the rest of section 13, the demarcation point between an award of financial assistance and a management action was unimportant—the rest of section 13 covered each. The absence of management actions from coverage under § 86.50, however, requires that the scope of an assistance "award or allocation" be set out for purposes of that section.

The Department believes that the term, "award or allocation of financial assistance," should be given the broadest possible interpretation. This approach best effectuates the congressional concern that the fee and other arrangements involved in influencing the provision of assistance not be based on a percentage or contingent basis.

The test will be whether an award or allocation of assistance is involved. For purposes of § 86.50, an item that constitutes an award or allocation of assistance will be so counted, even if the assistance may be classified as a management action under the rest of Part 86. Accordingly, the rule provides that section 13(a)(4) reaches the provision of any financial assistance, as defined in § 86.15. This includes assisted housing contract amendments, extensions, and renewals.

Section 86.50(a) contains an exception from the general rule against contingency fees where all or part of the professional services related to a project are donated to the nonprofit entity in the event assistance for the project is not awarded. "Professional services" is defined in § 86.50(c). However, this term is not synonymous with "professional and technical services," as that term is used in Part 87, which implements the Eyrd Amendment. The exception for professional services in Part 86 is much narrower than the exception for professional and technical services in Part 87.

78. *Comment.* The commenter is paid through agreements that describe the services to be provided in great detail and that require the payment of a small retainer, progress payments for the completion of preliminary tasks associated with preparation of documents, and large back-end

payments conditioned upon loan closings. Fees may be a percentage of a loan or grant. For nonprofit and for-profit clients alike the work is done conditionally, forfeiting the majority of the fee should the project not be approved or go to loan closing. Does the rule require the commenter in the future to charge for-profit clients a flat lump sum fee, payable, win, lose, or draw?

(one consulting firm)

Response. The rule does not require the commenter to charge for-profit clients a flat lump-sum fee, provided that the activities described above meet the exception for compliance with HUD requirements or procedures, or that there is no direct communication by the consultant with officers or employees of the Department. In all other cases, the fees would be subject to the rule's prohibition.

79. *Comment.* In representing owners filing Plans of Action for incentives under title II of the Housing and Community Development Act of 1987 or title VI of the National Affordable Housing Act, the commenter negotiates compensation equal to a fixed fee plus a percentage of the excess of the "recapitalized value" of the project resulting from the incentives over the existing HUD mortgage debt. The commenter requests specific clarification that such arrangements are permissible.

(one consulting firm)

Response. The commenter's activities on behalf of the project owner include conducting a financial analysis of the project, drafting the plan of action and submitting it to HUD, negotiating the details of the plan of action (including the amount of subsidies and other assistance) with HUD staff, analyzing the impact of the plan of action, and informing tenants of the plan of action and its impact. Section 86.50 is applicable only to those activities that involve direct communication with HUD officials or employees. With respect to such communication, such as negotiating the details of the plan of action, HUD would regard such activities as being undertaken to comply with "conditions, requirements or procedures of the Department," if the communication by the consultant is made for the purpose of demonstrating that the proposed terms of the plan of action comply with HUD's requirements for a plan of action. If the consultant's work can be so characterized, then the consultant's fee arrangement would be exempt from the prohibitions in § 86.50(a).

80. *Comment.* The rule merely repeats the statutory language with respect to the limitations on fees to consultants. Queries:

a. Fees paid to FHA mortgagees (who may attempt to influence the Department to endorse mortgages for insurance) are by regulation (24 CFR 207.2) tied to the mortgage amount. Is HUD forcing a violation?

Response. HUD regulations do tie certain mortgagee fees—e.g., initial service charge—to the mortgage amount. (See for example, 24 CFR 207.2, 221.508, and 232.15.) Also, there are administrative handbook procedures regarding the permanent financing fee and the total of such fee and the initial service charge which may be included in the loan. Therefore, to the extent that lobbying-type fees paid to mortgagees (which must be shown in paragraph 18 of the form Mortgagee Certificate, HUD-92434) are necessary to comply with conditions, requirements, or procedures of HUD, the fees would be within the exemption for compliance with HUD conditions, requirements, or procedures, and the Department does not believe that it is forcing a violation of the rule's limitations on fees provisions contained in § 86.50. However, to the extent such lobbying-type fees are outside the exemption, they would be subject to the limitations on fees to consultants.

b. Other professionals involved in FHA matters (e.g., attorneys, accountants, and architects) traditionally charge flat fees that are based, at least in part, on the amount of the mortgage and that are not collected in the event the transaction does not close. Such professionals may attempt to influence HUD. Are such arrangements now illegal? Do such professionals have to sue to recover fees when deals do not go forward to avoid the contingent fee prohibition?

Response. If the actions taken by the professionals are in compliance with HUD requirements or procedures or do not involve direct communication with the Department, they are permitted. Otherwise, such actions would be prohibited from payment under a contingency arrangement.

c. Management agents (who are often in the position of advocating on the owner's behalf with HUD on a variety of issues) are by Handbook and custom compensated by reference to the income generated by the project in question. Since the income of a project receiving HUD assistance will be partially or fully funded with HUD assistance, arguably, management agents' fees could be said to violate the statute, particularly where a management agent's responsibilities

include attempting to convince HUD to increase Section 8 payments (*i.e.*, if the Section 8 increase, the management fee increases).

Response. If the actions taken by the management agents are in compliance with HUD conditions, requirements, or procedures, that are imposed by law, regulation, directive, or other written instruction (including a "handbook," as stated by the commenter), then those actions are permitted. Otherwise, such actions would be prohibited from payment under a contingency arrangement.

(one national organization)

81. **Comment.** Two commenters assert that the rule goes well beyond the statute in prohibiting "any fee or remuneration of any kind that * * * is contingent in any way on an award of assistance by the Department * * *."

It certainly was not the purpose or intent of the legislation to change completely the perfectly legitimate way in which business has been conducted for the decades many of the HUD programs have been in effect. It is customary that if an attorney or consultant has assisted an applicant with an application that is not approved, there is an understanding for payment to be made up in whole or in part from subsequent applications that may be filed and that do receive approval.

This is a traditional industry practice that inures to the benefit of HUD as well as the program participants. Also, the commenters urge that the rule set out examples of arrangements acceptable to the Department.

(one law firm and one national association)

Response. The final rule clarifies that there are parameters within which section 13(a)(4) applies. The requirement that communications intended to influence departmental decisions must physically be made to an officer or employee of the Department provides considerable leeway for standard practices to continue. Attorneys and consultants may still assist their clients, so long as they do not directly approach the Department in giving the assistance to their clients.

Of course, if the assistance is in response to HUD requirements or procedures, and the procedures permit direct contact by the attorney or consultant, their fees may be contingent upon the award of the financial assistance by the Department to their client. Examples of acceptable arrangements have been added.

O. Appendix A

82. **Comment.** The examples in Appendix A are confusing. For instance, the examples of what constitutes a communication in response to a HUD requirement are unclear.

(one consultant and one law firm)

Appendix A does not contain specific examples of the kind of activities under § 86.25(a).

(one consultant)

Response. As a result of the public comments received, the examples have been reviewed and clarified to be representative of the policy this rule promotes. The reader is reminded that the Department cannot anticipate every scenario that would be encountered and that the examples given are representative of the policy intended. Examples regarding § 86.25(a) have been more clearly set forth.

83. **Comment.** The lengthy Preamble and numerous examples in Appendix A obfuscate rather than clarify the rule. Is Appendix A meant to determine the standards? If so, it is not clear. Are they mandatory or meant to be just "guidance"?

(one national association)

Appendix A has no regulatory effect. As time goes on, the examples will become more and more irrelevant. Federal Register publication of material like this will create tremendous difficulties for the administration of the rule. To publish such an Appendix with the final rule would be a serious mistake, because new examples will have to wait too long to be disseminated. Instead, a paragraph should be added to the Preamble stating that from time to time HUD will make available examples to help the public interpret the rule, and giving an address for procurement for the latest such compilation.

(one law firm)

Response. Section 13(h) states—

The regulations [to implement section 13] shall establish standards that include determinations of what types of activities constitute influence with respect to the decisions of the Department.

The Department believes that this language requires that the examples be codified. As standards, the examples constitute not just guidance, but binding, regulatory determinants.

The examples that were in the proposed rule have been reviewed in light of the public comments received, and the examples essential to establishing the standards have been clearly set forth in Appendix A. In

addition, both the rule and Appendix A contain cross-references that should help the reader better navigate around the rule making.

The Department may issue Policy Statements and Interpretative Rules to add to the rule additional examples as needed to refine programmatic issues in furtherance of the established policy. However, changes to the examples which establish new or different policy will be made only through notice and comment rule making.

P. Rule Making Issues

84. **Comment.** The comment period should be extended to allow for further analysis of the issues. After consideration of the comments, a new proposed rule should be published for comment.

(five law firms)

Response. Section 13(h) requires the Secretary to issue implementing regulations after notice and public comment. Therefore, the Department published a proposed rule on June 1, 1990, and the public was allowed a 60-day comment period. As a result of this comment period, the Department received comments from 39 commenters, whose comments touch virtually every aspect of the rule. The substantive changes that have been made in this final rule came in response to the concerns raised by the commenters, and the Department does not see the necessity or desirability for soliciting additional comments.

85. **Comment.** Many substantive points are contained in the Preamble. To the extent that the words of the Preamble are meant to expand upon the words of the regulations, the Preamble is being misused, and appropriate rule making is not being employed. Any matters of substance should become part of the rule since only the rule will be codified.

(one law firm and one association)

Response. The Preamble is designed only to explain in narrative form the substance contained within the regulatory text: It is not meant to have any substantive effect. All matters of substance are contained within the regulatory text of the final rule and the material provided in Appendix A.

Q. Miscellaneous Technical Issues

86. **Comment.** Query: On some occasions, contact will be made with HUD officials because an issue arises on a specific case that has general applicability. For example, HUD establishes an unpublished schedule for reimbursement of lender attorney fees

on foreclosures of single family mortgages. It is not clear whose interest is represented if an associate of a law firm engaged in foreclosure work contacts HUD to encourage an increase to the fee schedule that benefits the client on a particular case, but which potentially also benefits the law firm. It is unclear whether or not a "salaried employee" exemption applies if the interests of both the law firm and the client are involved.

(one consulting firm)

Response. As a practical matter, "fees" are generally not awards of "financial assistance" within the meaning of the rule, since they represent compensation for services rendered, not assistance. As such, they are not covered by the rule.

If, however, the client and the law firm are *each* seeking some form of covered assistance in the same transaction, *each* would meet the rule's threshold of applicability. *Each* would be subject to the rule's record keeping, reporting, and registration requirements, as appropriate.

87. Comment. The rule provides exceptions to the registration and reporting requirements (but not the record-keeping requirements) where the consultant's actions are in compliance with requirements imposed by HUD. However, the choice of examples of kinds of directives (" * * other written instruction such as a Notice of Fund Availability or application document * * *") is confusing.

The rule should either make it clear that these requirements do not apply, in general, to actions not related to the insurance of mortgages (such as the payment of claims, for example), or it should clearly include such actions by using them as examples.

(one consultant and one law firm)

Response. Additional examples regarding mortgage insurance arrangements have been added to the rule. Also, "mortgage letters" has been added to §§ 86.20(d)(2)(i) and 86.25(d)(2)(i) as a type of written instruction that may be followed in compliance with a HUD requirement. It should be noted that the compliance exception covers *all* the rule's requirements—record keeping, reporting, and registration.

88. Comment. The rule creates too many ambiguities about reporting. For example, how is it determined when to report for existing property? Are continuous dialogues required to be reported? Query: An owner of a HUD-assisted property has continuous contact with the Department, during

which the owner is perpetually trying to influence the Department legitimately on such matters as rent increases, management performance reviews, replacement reserve withdrawal requests, insurance claims and reimbursement, and HUD reporting and compliance requirements.

This continuity of contact makes deciding when to report very difficult. Do all the above listed dialogues trigger the reporting requirement?

(one consulting firm)

Response. Dialogues are not important to determining coverage of the rule. Agreements and expenditures are the critical determinants. Section 86.20(c) requires an annual report to be filed with the Department between the first and 10th day of January of each year by the person making expenditures to obtain lobbying services, if the total amount of those expenditures is \$10,000 or more. The report must contain, among other things, a detailed and exact account of all agreements and all expenditures intended to influence an award or management action.

Section 86.25(c) requires a detailed report to be filed with the Department between the first and 10th day of January of each year by each registrant (person engaged to provide lobbying services), if the sum of all the money or other things of value received is \$10,000 or more. The report must contain all money or other thing of value received, and all money or other thing of value expended in carrying out activities intended to influence a decision of the Department.

Each dialogue in a series of dialogues does not give rise to a new reporting requirement.⁷ Only those communications that change the terms of the original agreement need be reported, and then only if they increase the amount of the expenditure or payment or thing of value to be received.

An owner who has continuous contact with the Department does not come within the coverage of this rule, so long as he or she makes the contact, and does not make an expenditure to someone else to make the contact with the intent of influencing a HUD decision. The owner may use an employee to make the contact and may be excepted from the reporting requirements, if the employee meets the definition of "regularly employed" as set forth in § 86.15. Finally, it should be noted that

⁷ It should be noted, however, that information on each dialogue may have to be reported under the requirement that registrants report on "all money * * * expended * * * in carrying out the work

any communications that are made in compliance with HUD requirements or procedures are not covered.

89. Comment. If the owner sends in information in anticipation of a HUD request, must that be reported, whereas waiting would not? (The commenter recommends that HUD exempt from reporting all communications which surround periodic submissions that both HUD and the owner know are required on a regular timetable.)

(one consulting firm)

Response. A categorical exception cannot be made based on this scenario, because each situation must be looked at individually to determine whether an exception exists.

It is unclear whether the "information" referred to in the comment would come within the rule's purview. Submission of information that is not intended to influence the Department is not covered by the rule. Assuming the information is covered, the question is whether it is submitted in compliance with HUD requirements and procedures. If so, submission of the information would not be subject to part 86.

If the commenter's submission "in anticipation" of a HUD request means that HUD procedures establish a time for the submission of the information, but the submission is made *in advance* of that date, the submission would be subject to the rule. To qualify for the HUD-requirements exception, the submission must stay within the parameters of the HUD requirements.

90. Comment. The rule requires the registrant's report to include the name and address of any person for whom the registrant appears or works. It also requires that person to keep records and, if the thresholds are crossed, to report. There is no requirement, however, that the person for whom the registrant appears to be advised of the appearance or of the cost of it.

(one consultant)

What obligations, if any, does the hirer have to make sure the lobbyist complies with the reporting and registration requirements?

(one national association)

Response. The statute requires the client to be responsible for reporting its own expenditures. It would be an excessive burden, and beyond the statutory requirements, to require the client to keep track of subsequent expenditures made by the person it retained.

There is no requirement that the person for whom the registrant appears

be advised of the subsequent retainers made by the registrant, or the details associated with them.⁸ If the lobbyist goes beyond the terms of the agreement, then the client may raise that fact as a defense. The likelihood of such a defense succeeding, however, would depend on the extent to which the agreement limited covered activities to those not subject to the rule.

91. *Comment.* In many situations, the engagement to approach HUD concerning a management decision is coincidental with other activities, and total compensation would include reimbursement for transportation and subsistence expenses.

The rule should be revised to exclude direct reimbursement of personal expenses from the record-keeping or reporting requirements of either party.

(one consultant and one law firm)

Response. To allow an exclusion for the reimbursement of personal expenses would be contrary to the clear statutory requirements.

—Section 13(a)(2) states that, with regard to expenditures made to influence decisions of the Department, "each person * * * shall keep a detailed and exact account of all such expenditures * * *."

—Section 13(a)(3) states that "each person making such an expenditure shall obtain a bill, stating the particulars, for every such expenditure, and shall retain all records * * * for not less than the 2-year period beginning on the date of the filing of the report required * * * which shall include * * * all such expenditures."

—Section 13(b)(1) states that "each person making an expenditure * * * shall file * * * a report specifying the total expenditures made * * * during the year * * *"

—Section 13(c)(1) of the statute requires each registrant to file "a detailed report of all money received and expended by the registrant during the preceding year in carrying out the work * * *"

It is clear that if the agreement entered into between the client and the lobbyist provides money to reimburse personal expenditures, the full amount of the money must be taken into account under all the statutory provisions quoted above.

In those situations where the lobbyist's activities are split between

those that are covered by the rule and those that are not, the lobbyist is charged with keeping a separate itemization of the covered activities.

92. *Comment.* Legal services in connection with Office of Inspector General Program Audits and Investigations should be exempt.

While clearly these legal services by counsel are performed in order to seek to influence a decision of HUD officials, they are (a) services which are paid for by the clients "in complying with conditions, requirements or procedures imposed by the Department," (b) most often involve "the negotiation, compromise or other resolution of an issue that, without such resolution, could reasonably be expected to result in litigation," and (c) are essentially "an administrative proceeding conducted by the Department Pursuant to statute or regulation that provides for the resolution of issues of fact or law (or both), or the imposition of a sanction or penalty, by a hearing officer or by an officer or employee of the Department."

(one law firm)

Response. As stated above, there cannot be any categorical exceptions. The types of legal services described above may or may not be exempt from coverage, depending on whether or not they meet the requirements for the exception for complying with HUD requirements or the exception for litigation. Once again, the individual situation must be looked at to determine whether there was an intent to influence.

93. *Comment.* The legislation is not intended to cover legitimate legal representation. Therefore, implementation of the rule should be prospective, and not retroactive, as to projects or awards already underway or made. The registration and reporting requirements should apply only to NOFAs, or other funding notices, or to applications for loans, grants or other forms of financial assistance that commence after the effective date of the rule.

Future management actions on existing cases or projects should not be subject to this rule either. For example, the advocacy for mortgage increases on multifamily projects should not now become a matter of "lobbying" and be construed as a covered matter.

(one law firm)

Response. The Department agrees with the commenter that a "grandfather" provision is required with respect to that part of the rule dealing with the award of financial assistance. Section 13(h) specifies that section 13 takes effect

when this final rule does. Since section 13 defines its coverage—both for those making expenditures and for registrants—in terms of agreements, the Department believes that special effective date provisions are required both for agreements to make expenditures and for expenditures made pursuant to these agreements.

The Department does not, however, share the commenter's belief that management actions involving "grandfathered" transactions are designed to prevent the imposition of new requirements on those who have made commitments at critical points before the requirements take effect.

In the case raised by the commenter, the award of financial assistance is a matter entirely different from a future management action involving the assistance. The award deals with obtaining the assistance, the management action with keeping it under the same terms and conditions as it was granted. Thus, an agreement to make expenditures involving a management action that is executed on or after the effective date of the rule is fully subject to the rule's requirements, irrespective of when the underlying assistance was originally awarded.

Consistent with this reasoning, the **EFFECTIVE DATE** section at the beginning of this Preamble states the rule's effectiveness as follows:

- All agreements to make an expenditure that are entered into on or after the effective date of this rule;
- All expenditures made pursuant to an agreement to make an expenditure that is entered into on or after the effective date of this rule; and
- All expenditures made on or after the effective date of this rule, where the expenditure is not made pursuant to an agreement.

94. *Comment.* The rule is unclear as to the obligations of all parties when a firm represents a client "gratis." Is the exchange of services for "goodwill" or organizational "credibility" a thing of value triggering reporting or registration requirements?

(one consultant group)

Response. Truly "gratis" representation is not covered, because there is no expenditure. However, "credibility" and "goodwill" have some value and, as such, are covered, and have to be assigned a value by the reporting individual.

95. *Comment.* The commenter is concerned about the degree to which the rule will affect the use of associations to lobby HUD on issues which affect the use of CDBG funds received by the

⁸ As noted earlier, however, the rule's requirement that all reporting and registration information be published in the *Federal Register* will serve to make the information available to the public, including the client.

state. According to the examples in Appendix A, association activities paid for with general membership dues and other general contributions are not covered by the rule, but additional payments made to such associations to defray expenditures for influencing HUD with respect to specific awards of financial assistance or management actions are covered. This should be clearly stated in the rule itself—not buried in Appendix A.

(one State organization)

Response. As noted above, Appendix A has been reworked, and cross-references to the relevant Appendix provisions inserted into the rule text. The Department believes that these steps should make the rule more useful to the public.

96. *Comment.* The rule should make clear that both the client making the expenditure and the consultant receiving it may rely upon the good-faith allocation made by the consultant between payments received for exempted activities and payments received for related but non-exempted activities. The commenter believes that it will be unrealistic and unworkable to require that the client enter into separate agreements regarding the two kinds of activities where both may be involved.

(one law firm)

Response. The statute requires the client to keep a detailed and exact account of the expenditures made, and the consultant to file a detailed report of all money received and expended. Good faith allocations would be contrary to the provisions requiring specificity.

97. *Comment.* The rule provides only 10 days to report all the monies and items of value received or expended by the registrant for a whole year. The commenter suggests that 30 days is more reasonable because of holiday vacations and the stiff monetary penalties that may be imposed for failure or lateness in filing the annual report.

(one consulting firm)

Response. The January 1-January 10 reporting period is statutory, and cannot be changed by this rule. The Department believes that the burdens anticipated by the commenter may not be as oppressive, if the records are kept throughout the year with the specificity directed by the statute.

98. *Comment.* Queries regarding coverage:

a. Is a law firm exempt from registration and reporting when it has no preference as to which response HUD gives regarding, for example, the proper method of computing debenture interest

rates for FHA insurance upon completion cases? (The client purchasing the participation was indifferent as to the method specified by HUD; the correct answer was simply desired for the seller to deliver accurate representations and warranties to the purchaser.)

Response. The answer to this question hinges on whether the inquiry made by the law firm is intended to influence the HUD decision. If the inquiry is merely to obtain information, then the answer is "No."

b. Is a law firm subject to the rule because it advocates a position on behalf of its client regarding the assignment of FHA debentures which were subject to call by HUD? (The applicable HUD handbook was outdated in failing to reflect the standard industry practice of assigning certificated government securities through PD 1832s. Through its client, a major investment banker, the law firm had significant insight to present to HUD on settlement practices in requesting a decision on the issue.)

Response. The test in determining whether the commenter's example falls within the rule's coverage is whether there is an intent to influence the decision of the Department, and the arrangement is not otherwise excepted. Although it is not entirely clear from the comment, bringing "significant insight" to bear on the Department for what may be a management action may well invoke the rule.

c. How does a law firm determine when it becomes subject to HUD registration and reporting under the rule? From the moment it writes to request a decision from HUD or picks up the telephone to ask for advice? At the commencement of the entire transaction?

Response. The critical factor here is when there is an agreement to engage in influencing activities. The agreement between the client and the law firm should specify the types of activities for which the law firm is being retained. However, in the case of a vague retaining agreement, the law firm must register at any point at which a covered communication with the Department appears likely. At that point, the law firm must register with HUD within 14 days.

(one law firm)

99. *Comment.* The proposed rule allows on-staff employees to contact HUD in the ordinary course of business, but makes outsiders report. If an owner chooses to subcontract to an outside firm the process of tenant income

verification and recertification, is that now a reportable contact?

(one consulting firm)

Response. As a general matter, any use of outside personnel to contact HUD is subject to the rule. However, in this case, if verification and recertification of tenant income are done in compliance with a HUD condition, requirement, or procedure, then the use of an outside contractor to provide this type of technical service is outside the reach of the rule.

100. *Comment.* The rule should refer to the June 15 material regarding the Byrd amendment and state that this rule will be updated to conform to changes in the Byrd rule.

(one law firm)

Response. This rule is not being promulgated as a result of the Byrd Amendment. The two authorities are entirely separate, and even the implementing agencies are different: The Department is charged with implementing of section 112 of the Reform Act; the office of Management and Budget (OMB) is responsible for the Byrd Amendment implementation. Section 86.1 of this rule contains guidance on the relationship between section 112 and the Byrd Amendment.

101. *Comment.* The requirement for obtaining a bill should be eliminated when the agreement in question contemplates payment at given times with no bills to be rendered. Also, certain noncash payments would not be appropriately reflected on a bill.

(one law firm)

Response. section 13(a)(3) of HUD Act requires that a bill be obtained for each expenditure subject to section 13. This requirement admits of no exception, and the Department does not have authority to alter it.

102. *Comment.* There is no guidance as to whether the reporting of payments is to be handled differently for cash basis and accrual basis entities.

(one law firm)

Response. The accounting basis of the person involved is irrelevant. The rule contains its own guidance on how covered transactions are to be handled. It sets the time that an expenditure is considered to have been made as the point at which a person makes it available to another person without restriction. An agreement is considered to have been made when the contract or agreement is entered into, or the promise or other arrangement is made, even though a person receiving the

expenditure may not receive it at that time.

Expenditures and agreements to make expenditures must be reported, and appropriate records must be maintained. The value of any expenditure with monetary value is determined as of the date of the expenditure. The value of the agreement is established at the time of the agreement.

103. *Comment.* Throughout the rule, there appears to be inconsistent advice as to when something has been paid. For persons engaged to perform lobbying services, consideration under § 86.25(c) is deemed received when it is actually received or the individual has the absolute right to receive it. Yet, in § 86.20(g)(2), a contingent liability becomes a liability for purposes of counting expenditures in the amount that the person would be required to pay if the contingency came to fruition. Clarification is needed.
(one law firm)

Response. There is no inconsistency between these provisions: They address opposite sides of the expenditure/receipt ledger. Section 86.20(g)(2) deals with how expenditures made by those engaging lobbyists are counted. Section 86.25(c) deals with reporting expenditures received by the lobbyist. Each provides a fair and rational way of determining when and whether an expenditure has been made or received.

104. *Comment.* The example at 55 FR 22738 regarding lobbying by a national organization on a policy issue is misleading. The implication is that if an organization carries out lobbying activities with respect to general policy matters that have the effect of helping its members, it falls under coverage of the rule. The focus of the rule should be on whether the position taken by the organization was of interest to its membership in general or to a particular member with a particular problem.
(one national association)

Response. No lobbying activities with respect to general policy matters—including activities carried out by national organizations—are covered by this rule. This rule only reaches expenditures designed to influence the Department's decision with respect to specific awards of financial assistance and management actions.

105. *Comment.* Very few professionals in the housing business can be truly said to be sole practitioners. The rule should allow the "sole practitioner" exception, even if the officers or employees of a corporation do the lobbying or even if a sole proprietor has employees doing the lobbying, as long as the officers or

employees meet the test of being a regular employee.

(one national association)

Response. The commenter is confused about the overall exception for persons who lobby on their own behalf ("solo lobbying") and the exception for "regularly employed" personnel. Consultants retained for lobbying activities, who happen to be sole practitioners, do not qualify for the "solo lobbying" exception from the rule. This overall exception from the rule applies to the expenditure side of the ledger—those involved in an assistance award or a management action who lobby on their own behalf, and who do not procure the lobbying services from another.

Consultants also are unable to claim the "regularly employed" personnel exception. This exception again only applies to the expenditure side of the ledger: It is permitted only with regard to "regularly employed" personnel of the person that requests or receives financial assistance, or that is involved in the management action.

The reader is reminded, as discussed earlier, that only a single registrant need be held responsible for the registration and reporting requirements attributable to the "person" engaged to provide lobbying services, when that single registrant is a firm, association, or other entity that has been engaged to provide lobbying services. However, the members of the entity who are the individuals making the actual contact with HUD—whether it is a law firm, a consulting firm, or some other entity engaged to provide lobbying services—must be identified within the entity's registration. There will also be required an indication of whether any of the individual contact persons has been employed by the Federal Government during the two-year period before registration, and, if so, in what capacity. Important to the success of this less stringent interpretation of the statute is the timeliness and accuracy of updates that must be filed by the registrant/entity each time the person making the contact changes.

106. *Comment.* A question arises where requirements are imposed by law, regulation, or other written directive, or are "reasonably believed" by the person to be so imposed, and the examples in Appendix A are confusing. In light of the civil penalties that are potentially imposed for a violation, the burden should be for the Department to demonstrate by clear and convincing evidence that a person's belief was unreasonable. Otherwise, the public will be subjected to a vague standard of

conduct that may not pass constitutional standards of due process.

There is a question of proving who asked for material, particularly in oral communications. With respect to communications which are not in response to a written requirement, rather than focusing on who initiated the request, the commenter proposes to exempt any communication that the HUD officer or employee agrees in advance to accept, provided that such communication relates to complying with conditions, requirements, or procedures imposed by HUD in connection with any financial assistance. The lobbyist would be required to request permission to communicate with the HUD officer or employee prior to the actual communication.

(one national association)

Response. Procedural questions, such as the burden of proof and the standard of proof, are being handled in a separate rule making that implements not only section 112, but also several other sections of the HUD Reform Act that authorize the Department to impose civil money penalties. The reader is referred to paragraphs (g) and (h) of § 30.710 of the proposed rule published on September 10, 1990, at 55 FR 37290.

To accept the commenter's suggestion (that an exemption be made for any communication that the HUD officer or employee agrees in advance to accept, provided that the communication relates to complying with conditions, requirements, or procedures imposed by HUD) would continue some of the very "business as usual" practices that the Reform Act intends to correct. Trying to explain to a HUD official why an issue needs to be raised, and why it may be in response to a HUD requirement, is tantamount to attempting to influence the official, and clearly comes within coverage of the statute.

107. *Comment.* The rule purports not to cover representation on policy issues, but the Preamble says "substance is determinative" and a regulatory change could be construed as a management action. Query: A PHA employee, using PHA funds for travel and expenses, comes to D.C. to testify on behalf of a national association before congress on a policy issue which also benefits the PHA, such as higher administrative fees under section 8. Is this activity covered as to reporting and record-keeping?

Can a national association, whose membership pays dues from Federal funds, represent its membership on policy matters without being subject to the rule, although some or all of its

members may or subsequently do benefit from the new legislation? Further, can agency members pay dues to a national association without being subject to the rule?

(one national association)

Response. Testifying before Congress is not within the coverage of this rule. This rule covers persons that attempt to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action, *through direct communication with any officer or employee of the Department.*

Yes, a national association, whose membership pays dues from Federal funds, can represent its membership on policy matter without being subject to the rule, although some or all of its members may benefit from the new legislation. In addition, payment of general membership dues or charges to an association does not trigger the rule's applicability. The rule only reaches expenditures designed to influence the Department's decision with respect to *specific* awards of financial assistance and management actions. General policy matters, and general membership dues not designated for specific lobbying activities, are not covered.

108. **Comment.** Other ambiguities:

a. Are PHAs considered "nonprofit" in the exception to the limitation on contingency fees?

(one national association)

Response. By definition, a PHA is a State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of lower income housing, and as such, qualifies for the exception for nonprofits. By definition, as stated in § 86.15, this term includes an Indian Housing Authority.

b. Does the rule cover lobbying in State legislatures? If not, would this hold true even if the State legislature was considering a matter involving an allocation of Federal funds?

(one national association)

Response. As stated earlier, this rule covers persons who attempt to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action, *through direct communication with any officer or employee of the Department.* Therefore, this rule does not cover lobbying in State legislatures, irrespective of the subject of the lobbying.

IV. Other Changes Made in the Final Rule

Section 86.30(b). The final rule expands the registration information that is subject to **Federal Register** publication. The proposed rule limited the coverage to information required on the *registration form*, and did not reach information contained in the registrant's *report*. However, the Department believes that the proposed rule's approach was incorrect and that the statute's reference to "registration information" in section 13(c)(3) includes information pertaining to the annual report submitted by registrants. This change will effectuate the overall purpose of the statute by bringing into the "sunshine" all significant activities associated with influencing departmental decisions.

V. Other Matters

1. **Environmental Review.** A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

2. **Regulatory Impact Analysis.** This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

3. **Regulatory Flexibility Act.** In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), below is a Final Regulatory Flexibility Analysis. An Initial Regulatory Flexibility Analysis was published with the proposed rule on June 1, 1990, at 55 FR 22722, and public comment was invited as to the possible impact of this rule on small entities. A summary of the public comments received on the initial

analysis, as well as a response to each comment, is set forth below.

The final analysis is available to the public, and copies may be obtained from the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Overview

The issue presented in the proposed rule was whether the Department's proposed action was "likely to have a significant economic impact upon a substantial number of small entities."

a. *What does this rule attempt? Why? Under what authority is it promulgated?*

This rule sets forth the standards under which persons who make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures. It also establishes standards under which persons who are retained to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities. The rule is designed to improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence. The rule also contains provisions that set limitations on the payment of fees to persons who are engaged for the purpose of attempting to influence any award or allocation of financial assistance from the Department.

The rule is being promulgated to implement section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, approved December 15, 1989.

b. *Who is affected by this rule.*

The rule affects (1) persons who make expenditures to influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action, and (2) persons who are retained to influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action by the Department. In order to comply with the statute, persons who make expenditures to influence must, except in certain instances that are discussed earlier in this Preamble, keep records on those expenditures and report to HUD

annually on those expenditures. In addition, also in order to comply with the statute, persons who are retained to influence must, except for certain instances discussed earlier, register with the Department within 14 days of being retained and report to HUD annually on the money and other things of value received for the lobbying activities.

Through the definition of 'person,' this rule is intended to apply to individuals (including consultants, lobbyists, or lawyers), corporations, companies, associations, authorities, firms, partnerships, societies, States, local governments, or any other organizations or groups of people involved in activities to influence or to attempt to influence HUD decisions on the award of financial assistance or the taking of management actions with regard to the assistance. This rule affects in varying degrees the full realm of recipients of HUD assistance, including grantees, contractors, PHAs, sponsors, developers, builders, mortgagees, and mortgagors.

c. How are small entities affected by this rule?

What is the cost or benefit of compliance?

There may be an increase in paperwork requirements in that (1) persons who make expenditures must keep records of those expenditures and file an annual report and (2) persons who receive payment must submit a registration form to the Department and file an annual report. It should be noted that the reporting requirements—both for persons making expenditures and providing lobbying services—are subject to a \$10,000 annual threshold. Persons spending less than that amount do have to keep records, but do not have to file annual reports. Persons receiving payments have to register, but do not have to report.

In some instances, there may be the need to use lawyers and accountants, although it is unlikely that small entities will carry out lobbying activities to the extent that such specialized assistance will be needed routinely. It is unlikely that any specialized equipment or facilities will be required. It is also unlikely that this rule will significantly delay or accelerate the day-to-day business functions of those affected. However, this rule will promote the exercise of discretion relative to the conduct of business with HUD, in that it will improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence.

d. Public Comments Received and HUD Responses

71. Comment. The preliminary analysis under the Regulatory Flexibility Act significantly understates the impact of the rule on small entities. This commenter maintains that the cost of registration, maintaining the required records, and reporting would likely be greater than the income from activities that are actually covered. HUD would incur similar costs, and perhaps even greater ones, to no avail. Registration and record keeping requirements alone would double the time needed for each assignment, and this time could not be billed to the client. The result would be a 50 percent reduction in net income.

(one consultant)

Response. The regulatory requirements are consistent with the statute, and no significant additional requirements have been imposed. In fact, as a result of the public comments received, the Department has made several interpretations that trim those requirements even more. The Department perceives the remaining regulatory requirements to be burdensome only to the extent that the small entity engages in lobbying activities, and the Department does not believe that very many small entities will engage in lobbying activities to the degree to exceed the \$10,000 threshold for reporting.

72. Comment. The majority of this commenter's work does not entail influencing, but, rather researching records and providing direct advice on how to comply with HUD requirements. To "obtain a bill, stating the particulars, for every agreement and expenditure" would require revised billing procedures to segregate bills for services that might be covered from those that are not. This is an expensive and unnecessary requirement. Also, the fact that clients will be required to keep records of these minuscule expenditures is likely to have a severe dampening effect on the commenter's business.

(one consultant)

Response. Researching records and providing direct advice on how to comply with HUD requirements without direct communication with HUD officers or employees would not be covered by the rule. Therefore, there would be no need to keep detailed records on them. However, any other activities conducted as a result of being retained to influence a HUD decision will require detailed records, as mandated by the statute. Unfortunately, this may require revised billing procedures where the person

retained is regularly involved in influencing activities.

73. Comment. An unwritten rule in the consulting business is that client identities are not disclosed, except with the consent of the client. The reporting requirements of the proposed rule would make public the association of the consultant with the client. (In many cases, mortgage lenders don't like to admit that they needed help.) The commenter fears that clients may well decide not to engage him, simply because they do not want their relationship made public.

(one consultant)

Response. Section 13 is a disclosure statute, and may require modification of the confidentiality referred to by the commenter. The statute requires the client to identify itself in the annual report required, if its total covered expenditures are \$10,000 or more during the reporting year. The statute also requires the registrant to identify in whose interest it is appearing at the time of registration, and requires the registrant to provide a detailed report of all money it received and expended during the reporting year, unless its total compensation is less than \$10,000 for the year.

Therefore, all clients spending more than \$10,000 during the reporting year for the purposes of influencing HUD decisions will be required to reveal their own identities, and all consultants who enter into lobbying activities, to the degree that they exceed the \$10,000 threshold, will be required to submit the same types of information. This is in addition to identities made in the registration form required to be filed by the consultant within 14 days of being retained to influence a HUD decision.

Any client hoping to evade public scrutiny will not be able to do so by selecting consultants, unless the client is able to find a consultant whose total receipts for the year for HUD lobbying activities are less than \$10,000 and the total expenditures paid by the client for all HUD lobbying are less than \$10,000.

74. Comment. In addition, the commenter does not believe the Congress intended to impose the types of burden on small practitioners that will be imposed by this rule. The rule is unnecessarily complex and too redundant and does not consider the broad differences in types of consulting involving contact with HUD employees. It requires, in some cases, three different people to maintain records and to report on the same thing. The commenter suggests that a report from the consultant that identifies all of his or her

clients in covered matters, accompanied by copies of itemized bills to those clients and copies of IRS Forms 1099 substantiating the amounts of payments should be adequate for HUD's purposes. (one consultant)

Response. The Department does not believe that the burdens on the small practitioner will be as overwhelming as the commenter asserts. It is hard to believe that small practitioners would engage in lobbying activities with the frequency and degree of remuneration necessary to exceed the dollar threshold set by Congress to trigger coverage. The statute is clear as to the information required to be reported by those meeting the threshold, and does not permit the informality of submitting copies of bills and IRS forms used for other matters.

75. Comment. A lower threshold should be applied to fees from a single client necessary to trigger the reporting requirements, since payors are not required to provide Forms 1099 unless total payments exceed \$600 in a year. If the \$600 threshold is acceptable to IRS, it should be acceptable to HUD. Accordingly, the time for annual reporting should be moved from January 10 to some time after March 1, which is when IRS rules provide that Forms 1099 be provided to payees.

(one consultant)

Response. The Department is unable to accept any of the above suggestions, because the statute is clear regarding the thresholds and the dates for annual reporting.

e. Alternatives.

The Department does not have the leeway to consider other alternatives. The requirements are imposed by

statute, and the Department does not have the authority to reduce or change them, either as a general matter, or for small entities.

f. Net effect on small entities.

Small entities will be affected by this rule only to the extent that they involve themselves with influencing activities within the rule's purview. In those cases, they will have to comply with the statutorily mandated requirements regarding record keeping, registration, and reporting, as discussed above.

4. Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

The statute subjects State and local governments and their employees to its record keeping, disclosure, and registration requirements. The Department does not believe, however, that the effect is substantial, since section 13 provides only *procedural* requirements: the authority does not affect their *substantive* communications with the Department. In any event, the requirement is statutory, and is not subject to discretionary implementation by the Department.

5. Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It only imposes record keeping, disclosure,

and registration requirements on those seeking to influence the Department's decision making process.

6. Information Collection. The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 35011-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the *Federal Register*. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Tabulation of Annual Reporting Burden

Final Rule—Requirements Governing the Lobbying of HUD Personnel

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Annual Reporting of Persons Making Expenditures for Lobbying Activities.....	86.20(c)	1,047	1	1,047	1	1,047
Annual Reporting of Persons Receiving Payment for Lobbying Activities.....	86.25(c)	1,004	1	1,004	11.25	11,295
Registration (Individual).....	86.25(b)	1,114	1	1,114	1	1,114
Registration (Entity).....	86.25(b)	557	1	557	1	557
Total Annual Burden						14,033

7. Semi-Annual Agenda of Regulations. This rule was listed as item number 1226 in the Department's Semi-annual Agenda of Regulations published on April 22, 1991 (56 FR 17372) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

8. Catalog of Federal Domestic Assistance. There are no Catalog of Federal Domestic Assistance Program numbers assigned to this rule.

List of Subjects in 24 CFR Part 86

Lobbying (Government agencies), Administrative practice and procedure, Reporting and record keeping requirements.

Accordingly, the Department amends title 24 of the Code of Federal Regulations to add a new part 86 to read as follows:

PART 86—REQUIREMENTS

GOVERNING THE LOBBYING OF HUD PERSONNEL—SECTION 112 OF THE REFORM ACT

Subpart A—Relationship Between parts 86 and 87

Sec.

86.1 Relationship between parts 86 and 87.

Subpart B—General

- 86.10 Purpose.
86.15 Definitions.

Subpart C—Record Keeping, Reporting, and Registration Requirements

- 86.20 Requirements for persons making expenditures to obtain lobbying services.
86.25 Requirements for persons engaged to provide lobbying services.
86.30 Public inspection and publication requirements.
86.35 Penalties.

Subpart D—Limitations on Fees to Consultants

- 86.50 Limitations on fees to consultants.
Appendix A to part 86—Standards with Regulatory Effect
Appendix B to part 86—Chart

Authority: Secs. 7(d) and 13(g), Department of Housing and Urban Development Act (42 U.S.C. 3535(d) and 3537b(g)).

Subpart A—Relationship Between Parts 86 and 87**§ 86.1 Relationship between parts 86 and 87.**

(a) *Purpose.* This part and part 87 of this chapter set forth reporting and other requirements governing expenditures to influence the Department in connection with certain actions involving HUD contracts, grants, loans, and other forms of HUD "assistance." This section specifies the rules governing the overall relationship between this part and part 87 of this chapter. The reader should read both of these parts for a full understanding of their substantive requirements.

(b) *Statutory basis—(1) Part 86.* Section 112 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) added a new section 13 to the Department of Housing and Urban Development Act. Section 13 requires certain persons making an expenditure to influence HUD personnel with respect to the award of any financial assistance (contract, grant, loan, cooperative agreement, or loan insurance or guarantee), or with respect to any management action involving a change in the terms and conditions or status of financial assistance that was previously awarded, to keep records and to report to HUD on the expenditures. The provision also requires certain persons engaged to influence the Department with regard to any financial assistance or management action, to register with the Department and to report to HUD on the activities involved.

(2) *Part 87.* Part 87 of this chapter implements section 319 of the

Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 101-121, approved October 23, 1989). This provision amended subchapter III of chapter 13 of title 31, United States Code, to add a new section 1352 (the "Byrd Amendment"). It contains a general prohibition on the use of *federally appropriated funds* for influencing any Executive or Legislative Branch personnel in the award of Federal contracts, grants, loans, cooperative agreements, and certain post-award actions (such as the modification or extension of any of these forms of assistance). It also requires disclosure of certain information on payments from *non-federally-appropriated funds* that are used to influence the above Federal actions, as well as the insurance or guarantee of loans. The Byrd Amendment applies to *all* Federal agencies, and was implemented by a government-wide common rule that was published on February 26, 1990, at 55 FR 6736. HUD's adoption of the common rule is set forth at 24 CFR part 87.

(c) *Relationship between parts 86 and 87—(1) In general.* The reader should first determine whether his or her activities meet the applicability thresholds for either part.

(2) *One part only applies.* If part 86 applies, but not part 87, the provisions of part 86 must be met. If part 87 applies, but not part 86, the provisions of part 87 must be met.

(3) *Both parts apply.* If both part 86 and part 87 apply, the provisions of *both* parts must be met. For example, if an expenditure must be reported under each part, the reporting provisions of *both* the Byrd Amendment (reporting at request or receipt of assistance, as well as quarterly updates in certain circumstances) and section 13 (one-time annual reporting) apply. Similarly, if both parts apply, the greater of the civil money penalty provisions under section 13 or the Byrd Amendment takes precedence.

Subpart B—General**§ 86.10 Purpose.**

(a) *Subpart C.* The purpose of subpart C of this part is to set forth the standards under which:

(1) Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action, by the Department must keep records, and report to HUD, on the expenditures; and

(2) Persons that are engaged to

influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action, by the Department must register with HUD, and report to HUD on their lobbying activities.

(b) *Subpart D.* The purpose of subpart D of this part is to place limitations on the fees that may be paid to consultants that are engaged for the purpose of influencing the award or allocation of financial assistance by the Department.

§ 86.15 Definitions.

As used in subparts C and D of this part:

Agreement to make an expenditure or agreement includes all or part of a contract, agreement, promise, or any other arrangement, whether or not it is in writing or is legally enforceable, that involves an undertaking of any kind to make an expenditure. The term includes an arrangement under which a person has a financial involvement in the transaction, such as where contingent liability to make an expenditure is assumed by, or on behalf of, a person, or where the expenditure is provided by, or on behalf of, a person, but only if the person has an interest in the effort to influence the Department under this part. The term also includes any employment arrangement between a person and an officer or employee of the person. An agreement is considered to have been made when the contract or agreement is entered into, or the promise or other arrangement is made, even though a person receiving the expenditure may not receive it at that time. The value of any expenditure that has monetary value, other than cash, that is the subject of an agreement, must be determined as of the date that the agreement is entered into:

(1) By reference to an objective standard, such as a stock or bond quotation in the case of a stock or bond; or

(2) If no objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

Note: See section 11.2. of appendix A to this rule for examples and standards as to what constitutes an "agreement to make an expenditure" for purposes of this part.

Communication includes written, oral, electronic, or any other means of communication.

Department or *HUD* means the United States Department of Housing and Urban Development.

Directive includes (but is not limited to) a Handbook (including a change or supplement); notice; interim notice; special directive, as defined in paragraph 2-1., HUD Handbook 000.2 REV-1., *HUD Directives System*; and any other issuance that the Department may classify as a directive.

Expenditure includes a payment, distribution, loan, advance, deposit, gift of money, or the provision of anything else of value. An expenditure may have either monetary or non-monetary value. The term includes an expenditure made by a person to an officer or employee of the person as part of an employment relationship, except that where the person is an entity (such as a firm or an association) and is retained (as defined by this section), the term does not include an expenditure made by the person to its partners, associates, or other officers and employees, where the partner, associate, or officer or employee works on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children. An expenditure is considered to have been made when the person makes it available to another person without restriction. The value of any expenditure with monetary value, other than cash, must be determined as of the date of the expenditure:

(1) By reference to an objective standard, such as a stock or bond quotation in the case of a stock or bond; or

(2) If no objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

Note: See section II.1. of appendix A to this part for examples and standards as to what constitutes an "expenditure" for purposes of this part.

Financial assistance includes any contract, grant, loan, cooperative agreement, or other form of assistance that is provided under a program administered by the Department. The term includes the insurance or guarantee of a loan, mortgage, or security backed by a pool of mortgages or other instruments by the Department. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR ch. 1). The term also does not include an expenditure that represents compensation for services rendered or goods provided.

Indian means an individual who is recognized as being an Indian or Alaska Native by an Indian tribe, the Federal government, or any State.

Indian Housing Authority means any entity that:

(1) Is authorized to engage or assist in the development or operation of lower income housing for Indians; and

(2) Is established:

(i) By exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) By operation of State law providing specifically for housing for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means, for purposes of this section only, any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Influence means to affect in any way any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department. The term does not include communications that represent purely informational inquiries or purely ministerial requests; or actions taken in compliance with HUD requirements (§§ 86.20(d), 86.25(d) or § 86.50(b)), with respect to matters of litigation (§ 86.20(e) or § 86.25(e)), or by State and local officials (§ 86.20(f) or § 86.25(f)).

Note: See section IV. of appendix A to this part for examples and standards as to what constitutes "influence" for purposes of this part.

Knowingly means having actual knowledge of, or acting with deliberate ignorance of, or reckless disregard for, the requirements of this subpart.

Litigation means:

(a) Any civil action at law, or any proceeding in equity, to which the Department is a party, including any appeal or settlement, or other negotiations, with respect to the action or proceeding;

(b) Any criminal proceeding involving a program administered by the Department, including any appeal, or negotiations with respect to the charge, sentence, or otherwise, with respect to the proceeding; and

(c) Any administrative proceeding conducted by the Department pursuant to statute or regulation that provides for the resolution of issues of fact or law (or both), or the imposition of a sanction or a penalty, by a hearing officer or by an officer or employee of the Department. An administrative proceeding includes any appeal or settlement or other negotiations with respect to the proceeding. Administrative proceedings

include (but are not limited to) proceedings conducted under 24 CFR part 24 (Debarment and Suspension), 24 CFR part 25 (Mortgage Review Board), the Fair Housing Act (24 U.S.C. 3601), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), and the Age Discrimination Act of 1975 (42 U.S.C. 6103).

Note: See section IV. 4. of appendix A to this part for examples and standards as to what constitutes the exception for litigation for purposes of this part.

Management action means any action of the Department that involves a change in the terms and conditions or status of financial assistance awarded to a person. The term does not include audits and investigations that do not themselves involve a management action.

Office or Office that is responsible for administering this part means the organization within the Department that is responsible for administering the provisions of this part. To assist the public, the Department will provide information about the Office, including the official in charge and its mailing address and phone number, in a Notice published in the *Federal Register*, as appropriate.

Officer or employee:

(a) In the case of an individual employed by the Department, the term includes:

(1) An individual who is appointed to a position in the Department under title 5, United States Code, including a position under a temporary appointment;

(2) A special government employee, as defined in section 202, title 18, United States Code; and

(3) An individual who is a member of a Federal Advisory Committee, as defined by the Federal Advisory Committee Act, title 5, United States Code.

(b) In the case of an individual employed by a person, the individual is considered "employed" when the person for whom services are performed has the right to control and direct the individual who performs the services.

Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other

organization or group of people. The term does not include an Indian tribe.

Public housing agency means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage or assist in the development or operation of lower income housing. The term includes an Indian Housing Authority.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for the officer or employee for work that is not furnished to, or not furnished in cooperation with, the Department. If the officer or employees only performs HUD-related work, the term means compensation that is consistent with the normal compensation for similar duties and responsibilities of others employed in similar circumstances.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving financial assistance or who is involved in a management action, an officer or employee who is employed by the person for at least 130 working days within one year immediately before the date of the submission that initiates the Department's consideration of the person for receipt of such assistance, or the date of initiation of any management action. For purposes of the preceding sentence, a management action undertaken by the Department is initiated on the date on which the action is first communicated to the public. To be regularly employed, the officer or employee must:

(a) Be employed on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children;

(b) Have meaningful responsibilities; and

(c) Have duty hours not less than individuals of similar rank and responsibilities.

Note: See section IV.4. of appendix A to this part for examples and standards as to what constitutes the exception for regularly employed officers and employees for purposes of this part.

Retained means engaged pursuant to an agreement to make an expenditure. Where the person retained is an entity (such as a firm or an association), the term does not include the employment relationship between a person and its

partners, associates, or other officers and employees, where the partner, associate, or officer or employee works on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children.

Subpart C—Record Keeping, Reporting, and Registration Requirements

§ 86.20 Requirements for persons making expenditures to obtain lobbying services.

(a)(1) **Coverage.** Except as otherwise provided by this section, this section applies to each person—

(i) That makes, or that enters into an agreement to make, an expenditure to a person;

(ii) That makes, or that enters into an agreement to make, an expenditure to a person on behalf of another person; or

(iii) On whose behalf an expenditure is made to a person, or an agreement to make an expenditure to a person is entered into; if the expenditure is intended to influence, or should reasonably be expected to have the effect of influencing, a decision of the Department with respect to the award of any financial assistance or the taking of any management action, through direct communication with any officer or employee of the Department.

(2) **Exceptions.** (i) This section only applies to expenditures that are made to another person: A person that makes covered expenditures on its own behalf, without retaining another person, is not subject to this section.

(ii) The person that makes, or that enters into an agreement to make, an expenditure to a person on behalf of another person, as provided by paragraph (a)(1)(ii) of this section, is subject to the requirements of this part only if the person has an interest, financial or otherwise, in the lobbying activity.

Note: See sections II. and IV. of appendix A to this part for examples and standards as to what constitutes an "expenditure" or an "agreement to make an expenditure," and "influence," for purposes of this part.

(b) **Record keeping.** Except as provided by paragraphs (d), (e), and (f) of this section, each person subject to paragraph (a) of this section must:

(1) Keep a detailed and exact account of:

(i) All agreements, and all expenditures, referred to in paragraph (a) of this section;

(ii) The name and address of every person referred to in paragraph (a) of this section to whom an expenditure is made, or is to be made pursuant to an agreement to make an expenditure; and

(iii) The date of any agreement or expenditure referred to in paragraph (a) of this section;

(2) Obtain a bill, stating the particulars, for every agreement and expenditure referred to in paragraph (a) of this section; and

(3) Keep all records required by this paragraph (b) for not less than the two-year period beginning:

(i) On the date on which the report required by paragraph (c) of this section is filed; or

(ii) If no report is required to be filed under that paragraph, on January 10 of the year after the calendar year in which the agreement was entered into or the expenditure made.

Note: See section IV.1. of appendix A to this part for examples and standards on the rule's record keeping requirements.

(c) **Reporting.** (1) **Annual report.** Except as provided by paragraphs (c) (3) and (4), and by paragraphs (d), (e), and (f) of this section, each person subject to paragraph (a) of this section must file with the Department, between the first and 10th day of January of each year, a report specifying all the information required to be retained under paragraph (b)(1) of this section with respect to the preceding calendar year.

Note: See section IV.1. of appendix A to this part for examples and standards on the rule's reporting requirements.

(2) **Filing reports.** A report referred to in paragraph (c)(1) of this section is considered properly filed when it is deposited in a post office within the prescribed time, and is sent by certified or registered mail, postage prepaid and return receipt requested, to the Office that is responsible for administering this part. If that Office does not receive a properly filed report, the person must promptly file a duplicate report upon notification by the Office that the original report has not been received.

(3) **Exception for compensation to regularly employed personnel.** (i) The reporting requirements of paragraph (c)(1) of this section do not apply to the payment of reasonable compensation to a regularly employed officer or employee of the person that requests or receives financial assistance, or that is involved in any management action.

(ii) Any person asserting the exception in this paragraph (c)(3) must demonstrate, upon the Department's request and to the Department's satisfaction, that it qualifies for the

exception, including that it paid reasonable compensation to a regularly employed officer or employee, as those terms are defined in § 86.15.

Note: See section IV.4. of Appendix A to this part for examples and standards as to what constitutes the exception for regularly employed officers and employees for purposes of this part.

(4) *Minimum dollar requirement.* The reporting requirements of paragraph (c)(1) of this section do not apply if the sum of the amounts involved in all the agreements to make an expenditure entered into, and of all the expenditures made, by or on behalf of a person under paragraph (a)(1) of this section during the year covered by the report, is less than \$10,000.

Note: See section IV.2. of Appendix A to this part for standards on the dollar threshold requirements for this section.

(d) *Exception for compliance with HUD requirements.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to—

(1) Any part of an agreement that is wholly and expressly limited to making an expenditure to comply with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management actions; or

(2) Any expenditure that is limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; but only if—

(i) The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability, an application document, or a mortgagee letter); or

(ii) The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than as provided by paragraph (d)(2)(i) of this section.

Note: See section IV.3. of Appendix A to this part for examples and standards as to what constitutes compliance with HUD requirements for purposes of this part.

(e) *Exception for litigation.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to any agreement to make an expenditure, or any expenditure made, in connection with litigation to which the person is a party.

Note: See section IV.3. of Appendix A to this part for examples and standards as to what constitutes litigation for purposes of this part.

(f) *Exception for State and local government officials.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to—

(1) *Elected officials.* The elected officials of a State or local government.

(2) *Personal staffs of elected officials.* The political appointees who serve on the personal staffs of the elected officials of a State and local government. These individuals include (but are not limited to) Special Assistants and Executive Assistants to the elected official; and

(3) *Policy-level appointees.* Full-time, appointed officials of a State and local government who serve in policy-level positions. These individuals include cabinet officials of a State and local government, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbent simply executes policy set by others.

The exception under this paragraph (f) only applies to the extent that the individual claiming it is engaged in the official business of the State or local government that the individual serves.

Note: See section VI.4. of Appendix A to this part for standards on what qualifies for this exception.

(g) *Counting expenditures—(1) Expenditures pursuant to agreements.* In the case of an agreement to make an expenditure, the full amount of the agreement must be taken into account in reporting under paragraph (c)(1) of this section, or in determining the dollar threshold under paragraph (c)(4) of this section, even if not all the expenditures pursuant to the agreement are made at that time or within the reporting year. Subsequent expenditures made within the reporting year pursuant to the agreement are not counted twice: They must be taken into account for those purposes only to the extent that the expenditures exceed the consideration specified in the agreement. Expenditures not contemplated by the original agreement that are made in a subsequent reporting year are taken into account in reporting under paragraph (c)(1) of this section, or in determining the dollar threshold under paragraph

(c)(4) of this section, for purposes of the subsequent year.

(2) *Contingent liability.* The amount of any contingent liability assumed by a person equals the expenditure that the person would have had to make, if the contingency had been realized.

(1) *Form and manner of record keeping and reporting.* The Department may prescribe the form and manner of record keeping under paragraph (b) of this section and reporting under paragraph (c)(1) of this section. If the Department prescribes such requirements, it will publish a Notice in the *Federal Register* specifying any form to be used and where it may be obtained, as well as any other relevant information. Failure of the Department to prescribe such requirements does not relieve any person from complying with the record keeping and reporting requirements of this section.

(Approved by the Office of Management and Budget under control number 2535-0103)

§ 86.25 Requirements for persons engaged to provide lobbying services.

(a) *Coverage.* Except as otherwise provided by this section, this section applies to each person that is retained by a person to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action through direct communication with any officer or employee of the Department. It does not apply to a person that attempts to influence the Department on its own behalf, without being retained by another person.

Note: See section III. of Appendix A to this part for examples and standards on persons receiving payments under this part.

(b) *Registration.* (1) *General requirement.* Except as provided by paragraphs (d), (e), and (f) of this section, each person subject to paragraph (a) of this section must register with the Office that is responsible for administering this part. The registration must be received by the Office not later than 14 days after the date on which the person is retained, as provided by paragraph (a) of this section.

Note: See sections IV.1. and 6. of Appendix A to this part for standards on the registration requirements of the rule.

(2) *Form and content.* The registration referred to in paragraph (b)(1) of this section must be in writing, and must include:

(i) The name and business address of the registrant;

(ii) The name and address of the registrant's employer, and of any person in whose interest the registrant appears or works; and

(iii)(A) If the registrant is an individual, a statement of whether the registrant has been employed by the Federal Government during the two-year period ending on the date of the registration and, if so, in what capacity; or

(B) If the registrant is an entity, the names and business addresses of each partner, associate, or other officer or employee of the entity who will make the actual contact with HUD, and a statement of whether any such individuals have been employed by the Federal Government during the two-year period ending on the date of the registration and, if so, in what capacity.

(c) *Annual reporting.*—(1) *In general.* (i) Except as provided by paragraphs (c) (2) and (3), and by paragraphs (d), (e), and (f) of this section, each registrant under paragraph (b) of this section must, between the first and 10th day of January of each year, file with the Office that is responsible for administering this part a detailed report of all money or other thing of value received, and of all money or other thing of value expended, by the registrant during the preceding year in carrying out activities pursuant to an agreement subject to paragraph (a) of this section. The report must include such information as the Department may prescribe pertaining to whom, and for what purposes, the money or other thing of value was provided.

(ii) The value of anything with monetary value, other than cash, must be determined as of the date of the expenditure:

(A) By reference to an objective standard, such as a stock or bond quotation in the case of a stock or bond; or

(B) If no objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

(iii) For purposes of this paragraph (c)(1) of this section, money or an other thing of value is:

(A) Received when the registrant actually receives, or has the unrestricted right to receive, it; and

(B) Expended when the registrant makes it available to another person without restriction.

Note: See sections IV. 1. and 6. of Appendix A to this part for standards on the registration requirements of the rule.

(2) *Minimum dollar requirement.* The reporting requirements of paragraph (c)(1) of this section do not apply if the

sum of all the money or other things of value received by the person for activities under paragraph (a) of this section is less than \$10,000 in that year.

Note: See section IV.2. of Appendix A to this part for standards on the registration requirements of the rule.

(3) *Exception for compensation to regularly employed personnel.* (i) The reporting requirements of paragraph (c)(1) of this section do not apply to receipt of reasonable compensation by a regularly employed officer or employee of the person that requests or receives financial assistance, or that is involved in any management action.

(ii) Any officer or employee asserting the exception under this paragraph (c) (3) must demonstrate, upon the Department's request and to the Department's satisfaction, that it qualifies for the exception, including that it received reasonable compensation and that it was a regularly employed officer or employee, as those terms are defined in § 86.15.

Note: See section IV.4. of Appendix A to this part for examples and standards as to what constitutes the exception for regularly employed officers and employees for purposes of this part.

(d) *Exception for compliance with HUD requirements.* The registration requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c)(1) of this section, do not apply to—

(1) Any agreement that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; or

(2) The receipt of any money or other thing of value that is limited to complying with conditions, requirements, or procedures in connection with any financial assistance or management action; but only if:

(i) The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability or application document or a mortgagee letter); or

(ii) The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than as provided by paragraph (d)(2)(i) of this section.

Note: See section IV.3. of Appendix A to this part for examples and standards as to what constitutes compliance with HUD requirements for purposes of this part.

(e) *Exception for litigation.* The registration requirements of paragraph

(b) of this section, and the reporting requirements of paragraph (c)(1) of this section, do not apply to any agreement, or to the receipt or expenditure of money or any other thing of value in connection with litigation to which the person is a party.

Note: See section IV.3. of Appendix A to this part for examples and standards as to what constitutes litigation for purposes of this part.

(f) *Exception for State and local government officials.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to—

(1) *Elected officials.* The elected officials of a State or local government.

(2) *Personal staffs of elected officials.* The political appointees who serve on the personal staffs of the elected officials of a State and local government. These individuals include (but are not limited to) Special Assistants and Executive Assistants to the elected official; and

(3) *Policy-level appointees.* Full-time, appointed officials of a State and local government who serve in policy-level positions. These individuals include cabinet officials of a State and local government, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbent simply executes policy set by others.

The exception under this paragraph (f) only applies to the extent that the individual claiming it is engaged in the official business of the State or local government that the individual serves.

Note: See section VI.4. of Appendix A to this part for standards on what qualifies for this exception.

(g) *Updates for changes in registration.* Each person that makes a change to the information required under paragraph (b)(2) of this section, must comply with all applicable registration requirements under this section within 14 days of any change in information previously provided. If the person is an entity, it must also submit to the Office that is responsible for administering this part the information required under paragraph (b)(2)(iii)(B) of this section within 14 days of any change in information previously provided.

(h) *Form and manner of registration and reporting.* The Department may prescribe the form and manner of registration under paragraph (b)(2) and reporting under paragraph (c)(1) of this section. If the Department prescribes such requirements, it will publish a Notice in the **Federal Register** specifying any form to be used and where it may be obtained, as well as any other relevant information. Failure of the Department to prescribe such requirements does not relieve any person from complying with the registration and reporting requirements of this section.

§ 86.30 Public inspection and publication requirements.

(a) *Public inspection.* Each report on an agreement or an expenditure that is filed with the Office that is responsible for administering this part under § 86.20(c)(1) will:

(1) Be kept by the Office for at least the two-year period beginning on the date of filing;

(2) Constitute part of the public records of the Department; and

(3) Be open to public inspection.

The Department will publish a Notice in the **Federal Register** before this part takes effect, and as needed thereafter, informing the public when and how public inspection under this paragraph (a) may be conducted.

(b) *Federal Register publication.* The Department will compile all information submitted to the Office that is responsible for administering this part in reports under §§ 86.20(c) and 86.25(c), and registrations under § 86.25(b), as soon as practicable after the close of the calendar year with respect to which the information is filed. The Department will publish this information annually in a Notice in the **Federal Register**.

§ 86.35 Penalties.

(a) *Penalties and sanctions.* The Department may impose whatever sanctions or penalties are available under any applicable law for any violation of the requirements of this part. In appropriate cases, the Department will refer cases to the Department of Justice for prosecution.

(b) *Civil money penalties—(1) Grounds for imposition of penalty.* The Department may impose a civil money penalty on any person that knowingly fails:

(i) To file a report required under § 86.20(c),

(ii) To register under § 86.25(b), or

(iii) To file a report required under § 86.25(c).

A civil money penalty under this paragraph (b)(1) is in addition to any

other available civil remedy, administrative sanction or penalty, or criminal penalty, and may be imposed whether or not the Department imposes other administrative sanctions or penalties.

(2) *Amount of penalty.* The amount of the penalty that may be imposed under paragraph (b)(1) of this section will be determined on the basis of the factors listed in paragraph (b)(3) of this section, but may not exceed the greater of:

(i) \$10,000 for each violation; or

(ii) In the case of a person subject to registration under § 86.25(b), the total amount that the person received for any services performed to which the violation under paragraph (b)(1) of this section relates.

(3) *Factors in determining amount of penalty.* In determining the amount of a penalty under this paragraph (b), consideration will be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before May 17, 1991), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors that the Department may deem appropriate.

(4) *Procedures for imposing penalty.* Agency procedures regarding imposition of civil money penalties under this paragraph (b), as well as procedures regarding final orders, reviewability, judicial review, actions to collect penalties, and settlements by the Department, may be found at 24 CFR part 30.

(c) *Prohibition on consulting activities—(1) In general.* Any person upon whom a civil money penalty is imposed under paragraph (b) of this section may be prohibited, for the three-year period beginning on the date of the imposition of the penalty, from receiving any payment or thing of value for performing any services (with respect to any application for financial assistance) for any person.

(2) *Criminal penalty.* Any person that violates the prohibition under paragraph (c)(1) of this section shall, upon conviction, be guilty of a felony, and shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) *Transition provision.* No sanctions or penalties under this part or otherwise may be imposed by the Department for any failure to meet the requirements of this part for the period ending August 14, 1991.

Subpart D—Limitations on Fees to Consultants

§ 86.50 Limitations on fees to consultants.

(a) *General rule.* Except as provided by paragraph (b) of this section, no person that is engaged for pay or any other consideration to influence a decision of the Department with respect to the award or allocation of any financial assistance, through direct communication with any officer or employee of the Department, may seek or receive any fee or remuneration of any kind that:

(1) Is based on the amount of the assistance or the number of units that may be provided by the Department; or

(2) Is contingent in any way on an award of assistance by the Department, except where:

(i) Services are provided to a public or private nonprofit entity applying for the award or allocation of assistance; and

(ii) All or part of the professional services related to a project are donated to the nonprofit entity in the event assistance for a project is not awarded.

Note: See section V. of appendix A to this part for examples and standards on the arrangements that are subject to this subpart. See section IV. of appendix A for examples and standards as to what constitutes influence for purposes of this part. The term "professional services," as used in this part 86, is not synonymous with "professional and technical services," as that term is used in part 87, which implements the "Byrd" Amendment.

(b) *Exception for compliance with HUD requirements.* The provisions of paragraph (a) of this section do not apply to—

(1) Any agreement that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance; or

(2) The receipt of any money or other thing of value that is limited to complying with conditions, requirements, or procedures in connection with any financial assistance;

but only if:

(i) The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability or application document or a mortgagee letter); or

(ii) The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than

as provided by paragraph (b)(2)(i) of this section.

Note: See section IV.3. of appendix A to this part for examples and standards as to what constitutes compliance with HUD requirements for purposes of this part.

(c) *Definitions.* For purposes of paragraph (a)(2)(ii) of this section:

(1) *Professional services* includes (but is not limited to) legal and other advice concerning the financial assistance involved, the preparation of application and other documents with respect to the financial assistance, and any professional activities subject to § 86.25 with respect to the award or allocation of the financial assistance.

(2) *Part of the professional services* means at least 33 1/3 percent of the total professional services provided to the nonprofit entity.

(3) *Engaged for pay, or for any other consideration* includes, in the case of an entity, the employment relationship between the entity and its partners, associates, or other officers and employees.

(4) *Award or allocation of any financial assistance* means the provision of any financial assistance, as defined in § 86.15, including assistance involving the amendment, extension, or renewal of an assisted housing contract.

Appendix A to Part 86—Standards with Regulatory Effect

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- VII. Further Information
 - 1. Purpose
 - In general.* Part 86 deals with the two players who are typically involved in efforts to influence the Department with respect to the award of financial assistance or the taking of management actions: those who

obtain the services of another for this purpose and those who provide the services. In general, those who *obtain services* are required to *keep records and to report their expenditures to HUD*; those who *provide services* must *register with, and report their activities to, the Department.*

2. *Ground rules.* As required by section 13(h) of the Department of Housing and Urban Development Act (the "HUD Act"), this appendix is designed to provide standards to the public in determining the types of activities that constitute "influence" subject to part 86. Sections II. through IV. of this appendix address this question. Each of these sections sets forth the general rules for the topic, and provides examples to illustrate the rules.

Section V. provides similar information for subpart D of the rule—Limitations on Fees to Consultants. Section VI. provides examples on a range of topics of particular concern to the public in understanding part 86's requirements.

In using this appendix, several points should be noted:

- Sections I. and II. of this appendix view lobbying activities from the perspective of each of the two actors described above. This approach follows the structure of part 86, and is designed to provide the reader with the ability to refer to the preamble and the rule text for further explanation of each of the issues involved.
- The definitions contained in part 86 apply to this appendix.
- All reports required under part 86—from both the person obtaining the services and the person providing the services—must be submitted by January 10 of the year after the reportable activity occurred.
- For purposes of all the examples, unless otherwise indicated, "A" represents the person obtaining the services, and "B" represents the person providing them; the roles of other actors are described in the examples.

It should be noted that the material in this appendix is part of part 86 and, as such, has the same legal effect as regulatory text. The Department may issue Policy Statements and Interpretative Rules to add to part 86 additional examples as needed to refine programmatic issues in furtherance of the established policy. However, changes to the examples which establish *new or different* policy will be made only through notice and comment rule making.

Finally, it should be noted that Part 86 contains procedural requirements only. It neither expands nor limits the situations in which communications designed to influence the Department's decisions may be made.

II. Persons Making Expenditures.

Section 86.20 covers the following persons who make, or agree to make, expenditures to influence the Department:

Each person—

(1) That makes, or that enters into an agreement to make, an expenditure to a person;

(2) That makes, or that enters into an agreement to make, an expenditure to a person on behalf of another person; or

(3) On whose behalf an expenditure is made to a person, or an agreement to make an expenditure to a person is entered into; if the expenditure is intended to influence, or should reasonably be expected to have the effect of influencing, a decision of the Department with respect to the award of any financial assistance or the taking of any management action, through direct communication with any officer or employee of the Department.

The first step in defining what constitutes "influence" for purposes of this provision is to establish what constitutes an "expenditure" and an "agreement to make an expenditure."

1. Expenditures

General rule. An expenditure includes (but is not limited to) a payment, distribution, loan, advance, deposit, gift of money, or the provision of anything else of value. It is considered to have been made when the person makes it available to another person without restriction. An expenditure may be made by, or on behalf of, a person.

All expenditures made for the purpose of obtaining covered lobbying services are subject to part 86. This could include expenditures made by a person to an officer or employee of the person as part of an employment relationship. However, expenditures made by an individual attempting to influence a departmental decision *on his or her own behalf* are not covered.

In some cases, more than one "person"—both natural and otherwise—may be involved in the same lobbying transaction. In these cases, the Department will look to the substance of each person's role in determining part 86's applicability. Thus, in a given transaction, there may be more than one person making an expenditure, as well as more than one person retained to carry out the lobbying.

Part 86 is limited to expenditures with respect to the award of financial assistance or the taking of a management action. Representation with respect to other issues, such as policy matters, that are not related to specific cases, is generally not covered.

Consistent with the statute, an expenditure will be given the most inclusive meaning possible. It will cover anything that has any value whatsoever, even things of nominal or non-monetary value.

The value of any expenditure with monetary value, other than cash, must be determined as of the date of the expenditure:

- By reference to an objective standard; or
- If no objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

[Note: for the rule text, see the definition of "expenditure" in § 86.15 and § 86.20, generally.]

* * * * *

Examples.*

* The following examples address only A's responsibilities under Part 86; B's obligations are addressed in section III. of the Appendix. Each of

Continued

- A makes a cash payment to B to lobby HUD. A incurs the expenditure at the point that the payment is made.
- A deposits a payment in B's bank account as compensation for lobbying services, and has imposed no restriction on B's access to the payment. A incurs the expenditure when he makes the payment to B's account, even if B actually withdraws the payment at a later time.
- A gives B a check in payment for lobbying services, but tells B that he must wait for further instructions before cashing it. A incurs the expenditure only when he authorizes B to cash the check.
- A allows B to use his vacation home in payment for covered lobbying. Use of the home is a thing of monetary value that constitutes an expenditure. Since use of the home in this context is a non-cash expenditure, A must assign an appropriate value to it.

Assuming that no *objective* valuation standard for the house is available at a reasonable cost, A is free to use any means that are *reasonably designed to produce a fair and accurate valuation*. For example, A could refer to other, recent occasions on which the house was rented at market value. If this information is not available, A could conduct a brief survey of similar accommodations in the area. A is not required to attempt an exact valuation through costly means, such as real estate appraisals, even if they would produce a more exact valuation. An appraisal will be required, however, if there are *no* other means that are reasonably designed to provide a fair and accurate valuation of the expenditure.

In addition, the valuation of the use of the home must reflect the circumstances present when the home is used. For example, if the home is in Aspen, Colorado, and is used during the winter ski season, the valuation must reflect its use at that time.

- A helps B's son gain admission to a university as partial payment for lobbying services. A incurs an expenditure, even though it may have no monetary value to either A or B.
- A gives B common stock in payment for lobbying activities. A must value the stock as of the date that the stock was given. Valuation must be by reference to an objective standard, such as the New York Stock Exchange Index.
- A asks C, a business associate, to make a payment to B to lobby HUD for A. A incurs an expenditure, since the payment was made on his behalf. As noted later, C may also incur an expenditure if he had an interest of any kind in the lobbying venture.
- A is a national association, with a full-time governmental affairs staff that is responsible, among other things, for representing the association before HUD. A derives its operating income from membership dues and other contributions from members. A assigns B, one of its

employees, to represent the association in a management action involving C, a member of the association. The total cost of representation comes from general membership dues.

The relationship between A and the source of its income—its membership—is not covered by Part 86. *General membership dues and other general contributions* made available to A are not covered by Part 86, even though amounts from these sources may ultimately be used in covered lobbying. Part 86 only reaches expenditures designed to influence the Department's decision with respect to specific awards of financial assistance and management actions.

The relationship between A and B, however, does come within Part 86. When A pays B a salary drawn from general membership amounts to influence the Department, A incurs an expenditure, and B must register, and may have to report as a registrant.¹⁰ This is the classic employer/employee relationship under part 86. The exempt character of the dues *received* does not continue to the use of the funds. If the dues are *used* for a covered activity, they are subject to part 86.

—A is a national association, with a full-time governmental affairs staff that is responsible, among other things, for representing the association before HUD. A derives its operating income from membership dues and other contributions from members. A assigns B, one of its employees, to represent the association in a management action involving C, a member of the association. C makes an additional contribution to the association specifically to cover one-half of the costs of the representation. The remainder of the cost of representation comes from general membership dues.

C has incurred an expenditure for the full cost of the representation. He is required to keep records and report on the special contribution he provided, since he made the expenditure to A for a lobbying purpose. He is also required to keep records and report on the costs paid from general membership dues, since A has paid these amounts *on his behalf*.

A has not incurred an expenditure for the membership dues used to pay B's salary in furtherance of the lobbying activities. Literal application of Part 86 would result in A wearing two hats: as the entity retained by C and as the one making the expenditure to B. Such a result would be confusing and unnecessary. Therefore, in the above case, A is only required to register and report, as shown in a later example.

—A is the national association referred to above. One of A's employees is assigned to talk to HUD policy makers regarding a general provision in a tax bill pending in Congress.

¹⁰ It should also be noted that the association cannot avail itself of the "regular employment" exception to § 86.20's reporting requirements, since that exception only runs to officers or employees who are employed by the person that requests or receives the financial assistance or is involved in the management action. In the example, the association's interest in the matter is as C's representative.

A's salary to the employee with respect to the management action is not an expenditure for purposes of Part 86. The tax matter is a general one, unrelated to the award of any financial assistance or management action.

—A, a developer, engages B, a law firm, to represent him in a management action pending before HUD. B assigns the matter to two of its associates, who provide the representation throughout the action.

A has to report his expenditure, because he has engaged B for a covered undertaking. B must register under § 86.25 as the person retained to provide the lobbying services, and may have to report under § 86.25.

As discussed later, however, B's employees need neither register nor report. B, however, must include in its registration an identification of the employees who will contact HUD and an indication of whether any of them have been employed by the Federal Government during the two-year period ending on the date of the registration and, if so, in what capacity. (See § 86.25(h))

—A is a sole practitioner who has an assistance application pending with the Department. A attempts to influence HUD officials with regard to the award of the assistance. A is not subject to Part 86. Coverage under Part 86 requires the "two-player" scenario mentioned above.

—A is a sole practitioner who has an assistance application pending with the Department. A asks a paralegal in his office to contact HUD on behalf of his assistance application.

A is covered by Part 86. Although he is a "sole practitioner," his request to his paralegal establishes the "two-party" scenario required for coverage under Part 86, assuming he does not meet the definition of "regularly employed."

—A, the director of a low-income housing association, asks B to meet with HUD officials in support of a grant proposal that A has submitted to HUD. B is a PHA director, with many years experience with public housing. B has no interest in the proposal, other than as a citizen concerned about improving housing conditions for the poor. B meets with the HUD officials. Neither B nor A is subject to the rule. No expenditure has been made, since nothing of value passed between them. B's services were provided truly "gratis."

—B volunteers to lobby for a HUD grant on behalf of A, a developer. B is not interested in the grant itself, but hopes through his efforts to establish "good will" and "organizational credibility" with A.

Both A and B are covered. "Good will" and "organizational credibility" are things of value, and, therefore, expenditures under Part 86.

* * * * *

2. Agreements to Make an Expenditure

General rule. Part 86 covers "agreements to make an expenditure." To qualify as an "agreement to make an expenditure" under Part 86, both elements must be present: there must be an "agreement," and the "agreement" must involve an "expenditure."

the examples assumes that the applicable dollar thresholds have been reached and that the expenditures involved are not otherwise excepted from Part 86's coverage.

as discussed in section II.1. of this Appendix, above.

The "agreement" element is to be accorded the widest possible definition. An "agreement" includes all or part of a contract, promise, agreement, or other arrangement that involves an undertaking of any kind by, or on behalf of, a person to make an expenditure. It covers any bilateral, unilateral, or other arrangement under which a person agrees to make an expenditure in the future. An arrangement is considered an "agreement" for purposes of Part 86, whether or not it is in writing or is legally enforceable.

Although State or local contract law may be helpful in determining whether the arrangement constitutes a contract or a promise, the fact that even legally unenforceable arrangements are covered, requires HUD to make the final determination of whether an "agreement" subject to Part 86 has been made. The Department will make this judgment based on all the circumstances involved, and will consult State or local law as appropriate.

Part 86 reaches a number of persons and arrangements. An agreement may include arrangements, such as an employment contract, under which a person uses its officers and employees to lobby the Department. Any party to an agreement—whether or not named in any writing—that commits to provide an expenditure is covered.

Those who have an interest in the transaction may also be subject to Part 86. These include persons who assume contingent liability in any agreement to make an expenditure, or who lend or otherwise provide the money or other thing of value that is the subject of the expenditure. For these persons, the test for coverage is whether they have any interest in the outcome of the lobbying effort.

For purposes of determining Part 86's dollar threshold for reporting expenditures, the full amount of the person's participation in the arrangement is counted. For example, the full amount of a contingent liability is counted, even though the contingency is not triggered.

An agreement is considered to have been made when the contract or agreement is entered into, or the promise or other arrangement is made, even though a person receiving the expenditure may not receive it at that time. The reporting and record keeping requirements of § 86.20 attach at that point.

The value of the expenditure involved in an agreement must be determined at the time the agreement is entered into, and must use the valuation rules discussed in section II.1. of this Appendix.

A person who enters into an agreement to make an expenditure, and later makes the expenditure, is not required to "double count" it: the agreement triggers the reporting requirement and the later expenditure is not counted, provided that it involves the same consideration. If the expenditure differs from the consideration specified in the agreement, the difference must be reported to the extent its value is greater. If the expenditure is less than the consideration in the agreement, no change may be made in the amount in the agreement.

[Note: for the rule text, see the definition of "agreement to make an expenditure" in § 86.15, and § 86.20 generally.]

* * * * *

Examples.¹¹

—A makes a promise to pay B \$1,000 to influence the Department. The expenditure is considered made at that point. It is irrelevant that the actual payment is made later: the making of the promise triggers Part 86.

If A later pays B the \$1,000, the actual payment need not be reported. There is no change in the consideration of the original agreement.

If A pays B the \$1,000 plus a \$500 bonus, the additional \$500 must be reported. The consideration has changed, and has exceeded that contained in the original agreement.

If A pays B \$900, no further reporting is required: the initial reportable amount may not be reduced by later events.

—A enters into an agreement in July to allow B to use his Aspen, CO vacation home for one week in December in payment for covered lobbying. Use of the home is a thing of monetary value that constitutes an expenditure. Since use of the home in this context is a non-cash expenditure, A must assign an appropriate value to it at the time that the agreement is entered into.

Assuming that no objective valuation standard for the house is available at a reasonable cost, A is free to use any means that are reasonably designed to produce a fair and accurate valuation. For example, A could refer to other, recent occasions on which the house was rented at market value. If this information is not available, A could conduct a brief survey of similar accommodations in the area. A is not required to attempt an exact valuation through costly means, such as real estate appraisals, even if they would produce a more exact valuation. An appraisal will be required, however, if there are no other means that are reasonably designed to provide a fair and accurate valuation of the expenditure.

In addition, although the valuation must be made at the time the agreement is entered into, the valuation of the use of the home must reflect the circumstances present *when the home is to be used*. Thus, the valuation must be made in July, and must reflect use of the house in December.

Once the valuation is made, A need not revalue the expenditure, provided the expenditure is made as provided in the agreement. This is the case even if the value of the use of the home increases between July and December. The increase need not be reported, since there has been no change in the agreed upon consideration.

If, however, A moves the December use to May, or throws in one-week's worth of ski instructions and lift passes, the new

¹¹ The following examples address only A's responsibilities under Part 86; B's obligations are addressed in section III of this Appendix. Each of the examples assumes that the applicable dollar thresholds have been reached and that the agreements involved are not otherwise excepted from Part 86's coverage.

expenditures must be assigned a value and reported at the time of the changed agreement.

—A enters into an arrangement under which A promises to pay for B's lobbying services on an "as-provided" basis. The triggering event is the agreement, not the payments that are made over the life of the agreement.

—A is a developer and promises to arrange for B, in return for lobbying HUD in a pending management action involving A, to get an extremely favorable loan at the local bank at an interest rate below any rate permitted by the bank's board. Part 86 is triggered, even though B has no recourse if, at some point later, the bank does not honor the promise.

—A enters into an agreement with B that a State court finds to violate the parol evidence rule. Mere unenforceability is not relevant. The Department will review all the circumstances and determine whether A and B had an agreement to influence the Department.

—A has a grant proposal pending before the Department. He asks C, a business partner, to guarantee 50 percent of a bank loan to cover the cost of retaining B to lobby the proposal with HUD. If A's proposal is funded, C stands to share in the proceeds. C agrees to make the guarantee, but is not referred to in the contract. A repays the loan on time: C has incurred no financial loss.

C's assumption of guarantor status is subject to Part 86, to the full extent of his contingent exposure. The amount is set at the time the arrangement is entered into and is not subject to change, irrespective of whether the contingency is in fact triggered. In addition, the substance of the arrangement controls: the fact that C is not mentioned in the agreement is irrelevant.

—A needs cash to finance a lobbying effort. A secures a loan from C, a bank, for the full amount needed. A indicates on the loan papers that the loan proceeds will be used to lobby HUD.

The bank has no financial interest in A's endeavor. Its only interest in obtaining repayment of the loan. It has not incurred an expenditure subject to Part 86, since it has no financial or other interest in the outcome of the lobbying activities.

* * * * *

III. Persons Receiving Payments

Section 86.25 provides that each person that is retained by a person to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action through direct communication with any officer or employee of the Department must meet certain registration and reporting requirements.

General rule. The registration requirements of § 86.25 apply to any person who is engaged, pursuant to an agreement to make an expenditure, to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action. As noted above, § 86.20 applies where a person makes an agreement

to make an expenditure to influence the Department. Under § 86.25, a person is engaged for that purpose when he or she enters into that agreement: the agreement to perform lobbying services in return for the expenditure.

The reporting requirements of § 86.25 apply when the lobbyist receives the expenditure: in the words of the statute, when the lobbyist receives "payment or other consideration."

"Receipt" occurs when the person either actually receives the payment or has the unrestricted right to receive it. The valuation rules with respect to "expenditures," above, apply here as well.

These standards point up an important distinction between A and B in the examples: A's reporting obligations begin when an agreement to make an expenditure, or an expenditure, is made; B is required to register at that point, but is required to report only on what he or she receives under the agreement.

The types of arrangements covered by Part 86 include an employment relationship between a person and its officers and employees.

[Note: for the rule text, see § 86.25 generally.]

* * * * *

Examples.¹²

- A enters into an agreement to make an expenditure with B. Payment under the agreement is wholly conditioned upon B's future lobbying services. B must register with HUD. He is not required to report to HUD until he receives an expenditure under the agreement.
- A enters into an agreement with B under which A will compensate B after B has completed his lobbying services. B must register with HUD. A gives B a cash advance to cover B's "start-up" expenses. B must report the cash payment.
- A enters into an agreement to make an expenditure with B. B must register with HUD. A deposits a payment under the agreement in B's bank account, without restriction as to B's access to it. The payment is considered received when the account receives the payment, even if B actually withdraws the payment at a later time.
- A helps B's nephew (who lives in another State) gain admission to a university as part of a lobbying agreement. B must report A's help, since it is part of the consideration of the agreement. This is so, even though A's actions may have no direct monetary value to B.
- A agrees to let B use his vacation home in payment for covered lobbying. Use of the home is a thing of monetary value that must be reported. B must place a value on the use of the home as of the time he actually uses it. The same valuation rules noted in the example under section II.1, apply here as well.

As noted in the examples, above, A must also assign a value to the use of the home. B's

and A's valuations come at different times: A's when the agreement is entered into; B's upon "receipt" (use) of the home. B is free to obtain his own valuation, but, to avoid paper burden, B may opt to use A's valuation.

—A is a national association, with a full-time governmental affairs staff that is responsible, among other things, for representing the association before HUD. A derives its operating income from membership dues and other contributions from members. A assigns B, one of its employees, to represent the association in a management action involving C, a member of the association. C makes an additional contribution to the association specifically to cover one-half of the costs of the representation. The remainder of the cost of representation comes from general membership dues.

As noted earlier, C has incurred an expenditure for the full cost of the representation, and A has not incurred an expenditure for the membership dues used to pay B's salary in furtherance of the lobbying activities.

A is required, however, to register and report as a registrant. Consistent with the treatment of entities retained for lobbying purposes, A's registration must identify B as the individual who will contact HUD, and provide other information about B. B has no further obligations under Part 86.

—A is the national association referred to above. B, one of A's employees is assigned to talk to HUD policy makers regarding a general provision in a tax bill pending in Congress.

B is not required to register or report the activity, since the lobbying activities must involve a specific assistance award or management action.

—A is the national association referred to above. B, one of A's government affairs employees, is assigned to talk to HUD policy makers about a proposed regulation. Although the regulation expresses general policy, A's position is designed to help C, a member of the association, in a management action pending before the Department.

A's salary to the employee with respect to the management action is an expenditure for purposes of Part 86. B must register, since, although the regulation involves a general issue, the representation is primarily intended to further A's position in a pending management action.

* * * * *

IV. Influencing the Decision of the Department Through Direct Communication With an Officer or Employee of the Department

Part 86 covers:

- Those who make an agreement or an expenditure that is intended to influence, or that should reasonably have been expected to have the effect of influencing, a decision of the Department with respect to the award of assistance or the taking of a management action, though direct communication with any officer or employee of the Department; and

—Those who are retained, and receive any kind of payment, for this purpose.

1. Intent to Influence

General rule. "Influence" is to be given the broadest possible reading. It includes (but is not limited to) any effort to affect any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department.

An "intent to influence" may be shown in two ways: if the agreement or expenditure was *actually* intended to have the requisite influence (*actual intent*), or should *reasonably have been expected* to have the effect of having the requisite influence (*constructive intent*) in determining an intent to influence, the Department will take into account all the circumstances involved, including (but not limited to) oral and documentary evidence, and the actions of the parties involved.

The expenditure or communication must be designed (actually or constructively) to influence the officer or employee.

Communications of another nature need not be reported, even if they are made during an otherwise covered lobbying venture.

[Note: for the rule text, see the definition of "influence" in § 86.15 and § 86.20 and 86.25, generally.]

* * * * *

Examples.

- A writes a check to B pursuant to a written contract specifying that B is to lobby HUD. B endorses the check. The cancelled check and the contract are documentary evidence of an intent to lobby the Department.
- A makes an oral promise to pay B to lobby the Department. The intent to lobby may be established by all the circumstances involved, including the actions of A and B and the record of any payment actually made.
- A pays B to "look into" a HUD management action involving A. B makes a communication to influence the Department on A's behalf. A may not claim that it is not subject to Part 86, since it did not give B specific directions to lobby the Department. A reasonable person would conclude that A in fact intended B to attempt to influence the Department.
- B was a senior HUD official over 10 years ago. He is representing A, whose funding application is pending before the Department. B personally delivers A's application to C, the HUD official designated to receive applications for the assistance involved. When C asks B for his name, B also mentions his title while at HUD.

B's reference to his former position is not covered. Simple reference to B's former title does not *in and of itself* invoke Part 86.

Assume further, however, that after delivering the application, B stops by the office of D. D is a HUD employee in the decision making process for the assistance involved, and was a Special Assistant to B while he was at HUD.

B knows that D has an official role in considering A's application. Although he hasn't seen D since he left HUD, B considers

¹² The following examples address only B's responsibilities under Part 86; A's obligations are addressed in section II., above. Each of the examples assumes that the dollar threshold for registrant reporting has been met and that the agreements involved are not otherwise excepted from Part 86's coverage.

it advantageous to A's cause to "press the flesh" with D. In the course of the conversation, B tells D that he is representing an applicant in the funding competition.

B's conduct would invoke part 86. Unlike his remarks to C, B's approach was intended to "cash in" on an old relationship—and could reasonably have been expected to have that result.

—A, a State official, contacts HUD to ask when final selections will be made on the State's application for a grant that is pending before the Department. A's communication with HUD is informational, and does not trigger the requirements of the rule: there was no intent to influence. If A's communication had included a pitch for the State's proposal, the requirements of the rule would have been triggered. (Purely informational inquiries are permitted by anyone, not just State and local government officials.)

—B, a law firm representing a mortgagee with an FHA-insured mortgage, writes to HUD to point out that HUD mistakenly endorsed an insurance document with the wrong section of the National Housing Act. This request involves a purely ministerial change occasioned by a HUD mistake, and is not covered by the rule.

If, however, the law firm alleges that the "mistake" involved an erroneous interpretation of the law, the communication would be covered. Legal interpretations involve an analysis of the facts and the law of a specific case, and do not constitute purely ministerial acts. Efforts to change the interpretation involve an intent to influence.

2. Decision of the Department—Covered Communications

General rule. Part 86 covers direct communications with a HUD officer or employee that are intended to influence a decision of the Department with respect to the award of financial assistance or the taking of a management action. Specifically, Part 86 covers *any* communication for the purpose of influencing *any* HUD officer or employee with regard to *any* decision of the Department concerning the award of financial assistance or the taking of a management action—whether or not the employee participates in *any* way in the decision making process for the assistance or the action. All types of communications are covered, including (but not limited to) oral, written, and electronic.

Examples.

—B stops by the office of C, a HUD official involved in a pending management action in which B is representing a client. C is at lunch, so B chats with D, C's secretary. B asks D about the status of C's decision on the management action. B also tells D about the proposal, and highlights what B considers to be its strong points.

On the way out, B runs into E, a paraprofessional in the official's office who used to work with him. B says in parting, "You should see the gem of a proposal I've submitted this time."

B's inquiry of D concerning the status of the action does not trigger Part 86: the

communication is simply a request for information, and does not involve any attempt to influence.

The "briefing" of D, however, does trigger part 86. B's recitation of its position, and its strong points, could reasonably be expected to have the effect of influencing D. The fact that D is a secretary who is not in the decision making process in the matter is irrelevant. Part 86 reaches *any* HUD officer or employee who is targeted for influence with respect to a specific award of assistance or a management action by the Department.

B's remark to E does not trigger Part 86. The remark was a humorous "good-bye" between old co-workers, and could not reasonably be said to have been intended to influence E.

—A retains B, a law firm, to prepare documents in support of A's grant application with the Department. B prepares the material and returns it to A for submission. The documents contain no reference to B.

B is not covered by Part 86: there was no direct communication between B and the Department.

It should be noted, however, that *any* communication of an influencing nature between B and the Department would be covered. For example, the following contacts could very well be covered: B signs the letter transmitting the documents; B calls HUD to discuss the merits of the application; and B permits its name to be used in the documents.

3. Compliance With HUD Requirements

General rule. Part 86 does not apply to any agreement or expenditure under § 86.20, or any payment or communication under § 86.25, involving compliance with conditions, requirements, or procedures imposed by the Secretary in connection with any financial assistance or management action. The exception covers *both* the record keeping requirements of § 86.20 *and* the registration and reporting requirements of §§ 86.20 and 86.25.

In the case of *record keeping and reporting on expenditures and agreements to make expenditures under § 86.20*, the exception applies to:

- Any part of an agreement that is wholly and expressly limited to making an expenditure to comply with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; or
- Any expenditure that is limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; but only if—
 - The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability, application document, or mortgagee letter); or
 - The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than

by law, regulation, directive, or other written instruction.

In the case of *registration and reporting of payments for lobbying services*, the exception applies to:

- Any agreement that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; or
- The receipt of any money or other thing of value that is limited to complying with conditions, requirements, or procedures in connection with any financial assistance or management action; but only if:
 - The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability, application document, or mortgagee letter); or
 - The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than by law, regulation, directive, or other written instruction.

Where the communication is in response to a written HUD requirement, it may be initiated by the lobbyist. Where, however, the communication does *not* emanate from a written requirement, the exception may be claimed only where it is initiated by the Department.

A single communication may have elements that both are and are not subject to Part 86.

Examples.

—A pays B to prepare and submit to HUD an application, using an application "kit" provided by HUD. Part 86 does not apply to either A or B. The relationship between A and B is for the purpose of meeting a HUD requirement.

—A pays B to prepare and submit to HUD an application, using an application "kit" supplied by HUD. B reviews the "kit." He also reads the applicable regulation, and concludes that he is required to send some additional information to the Department in connection with the application.

B is in fact wrong, but the regulation led him to believe, as a reasonable person, that the additional submission was required. Part 86 is not triggered: a reasonable belief that a communication is required by HUD is sufficient grounds for action without invoking Part 86.

Part 86 does not apply to A. A's only directive to B was to use the "kit" to prepare the submission. This result follows, even if B's actions had been subject to Part 86: A is not responsible for action beyond his clear instructions.

—A pays B to prepare and send to HUD an application, using an application "kit" supplied by HUD. B reviews the "kit" and also talks to C, a co-worker who sometimes dabbles in HUD work. C tells B that he's heard that HUD has an unwritten policy of requiring an additional submission for this

type of application. Without further research, B makes the submission. C's information proves to be wrong.

B is subject to Part 86. C's representation would not lead a reasonable person to believe (at least without independent corroboration) that the additional submission was required.

As above, Part 86 does not apply to A. A's only directive to B was to use the "kit" to prepare the submission.

—B, an attorney, represents A, who is seeking to purchase a HUD-assisted project through a transfer of physical assets (TPA). B helps his client comply with the rules of the Department, as set forth in various Handbooks and other issuances in connection with such an acquisition. One of the required documents is a narrative description of the transaction, including a showing that certain specified criteria are being met. This narrative also normally serves as a "cover letter" conveying and explaining an application package that often contains many separate groups of documents. The narrative is clearly required, and is meant to show compliance with the HUD requirements. It is, by its nature, also an advocacy piece.

The "cover letter" is not subject to Part 86. Many forms of HUD submissions—notably applications—are advocacy in nature. Their very purpose is to persuade the Department to take an action in favor of the applicant. The critical question under the statute is whether the submission is necessary to comply with HUD requirements. If it is, the presence of persuasion does not *in and of itself* bring it within Part 86's ambit.

—B in the preceding example performs all the work in connection with the TPA, and drafts and signs the "cover letter."

B is not covered by Part 86. If the communication involves compliance with a HUD requirement, it is excepted from Part 86, even though the communication was made directly to a HUD employee.

—C, a HUD officer, contacts B regarding a pending application for financial assistance. C indicates that some necessary information is missing. B supplies the information. It turns out that C was wrong: the information was not required.

B has not triggered Part 86. C indicated that the additional material was required. This is enough to provide the exception, even though the requirement may not have been pursuant to a written HUD document.

—C, a HUD officer, contacts B regarding his pending application for financial assistance. C indicates that he'd like to hear more about B's application, "even though it's not strictly required by the application and other requirements." B meets with C.

Part 86 does not apply. Even though C's request was not a requirement, B should not be put in the position of risking unfavorable consideration of the application by denying C's request. Of course, a different result would be reached if B initiated the meeting by asking C to meet with him.

—A enters into an agreement with B to provide lobbying services. Half of the

agreement deals with the submission of material that is required by HUD regulations.

A is not subject to part 86 insofar as the contract involves meeting HUD requirements. B must register, even though part of the contract would otherwise be exempt. This is because registration is an "all or nothing" proposition that is not susceptible to division.

—A engages B, a consultant, to prepare and submit a grant application on behalf of A, and to push the proposal with HUD employees. B submits an application that addresses each of the application requirements in extraordinary fashion. For each selection criterion, B has prepared lengthy analyses. He has included several letters of support, and has packaged the application in the most expensive style. The HUD requirements do not limit the quantity and the nature of the material submitted.

B later learns that the application has been rejected. In such a case, HUD procedures permit a single resubmission, and discussion with the selecting official. B resubmits the material, with even more attention to detail than the original submission. He also calls the selecting official, and several of his friends at HUD, who are not involved in the selection process, to enlist their aid.

The application is again rejected, and B tries one last shot at resubmitting it.

B's original submission and the first resubmission fall within the exception for complying with HUD requirements. Their excessive length and lavishness is not prohibited under the applicable HUD procedures. Similarly, B's communication with the selecting official is within the procedures involved.

However, B's calls to his friends and his final resubmission cannot qualify for the exception. They are outside the established channels for the grant assistance involved.

It should be noted that if B's submission went beyond specific HUD requirements, Part 86 would have been triggered. For example, if the HUD procedures limited the letters of support to one, B's submission of the first letter would have been excepted, but the subsequent letters would have triggered part 86.

* * * * *

4. Litigation

General rule. Part 86 does not apply to any agreement or expenditure under § 86.20, or any payment or communication under § 86.25, involving compliance with litigation activities. The exception covers *both* the record keeping requirements of § 86.20 and the reporting requirements of §§ 86.20 and 86.25. Specifically, the exception applies to litigation to which the person is a party.

The term, "litigation," means:

(a) Any civil action at law or any proceeding in equity to which the Department is a party, including any appeal or settlement or other negotiations with respect to the action or proceeding;

(b) Any criminal proceeding involving a program administered by the Department, including any appeal, or negotiations with respect to the charge, sentence, or otherwise, with respect to the proceeding; and

(c) Any administrative proceeding conducted by the Department pursuant to statute or regulation that provides for the resolution of issues of fact or law (or both), or the imposition of a sanction or a penalty, by a hearing officer or by an officer or employee of the Department. An administrative proceeding includes any appeal or settlement or other negotiations with respect to the proceeding.

The exception for litigation reaches all litigation activities for the full term of the litigation, including any appeals. The exception is independent from the exception discussed above for complying with HUD requirements, although the two exceptions may overlap in some circumstances.

* * * * *

Examples.

—A retains B, a lawyer and sole practitioner, to represent him in a HUD debarment proceeding. As part of his case, B—

- Performs legal work;
- Commissions several studies to be done by economists;
- Calls several HUD officials;
- Calls a number of witnesses, including character witnesses; and
- Submits to HUD a number of advocacy pieces that were not invited by HUD officials or required by written HUD procedures.

A pays all B's fees.

A need not keep records or report; B need not register or report. Any expenditure or representation in the course of litigation (including appeals and settlements) is excepted from Part 86.

—A retains B, a lawyer and sole practitioner, to attempt to resolve a disagreement with HUD. A and B both agree that the issue is serious enough to warrant commencing legal action if the disagreement cannot be resolved to A's satisfaction.

Both A and B are covered by Part 86. The litigation exception only applies where the client is a party to litigation; the fact that the issue may later require litigation is irrelevant.

—In the course of resolving a finding made by the HUD Inspector General, the Assistant Secretary for CPD makes a management decision to suspend further dispensing of grant funds to A, a HUD recipient, pending further resolution through the administrative process. A hires B, a lawyer, to influence the decision of the Assistant Secretary.

As in the example above, both A and B are covered by part 86. The litigation exception only applies where the client is a party to litigation; the fact that the issue may later require litigation is irrelevant.

* * * * *

V. Limitations on Fees to Consultants

Section 86.50 provides that no person that is engaged for pay or any other consideration to influence a decision of the Department with respect to the award or allocation of any financial assistance, through direct communication with any officer or employee of the Department, may seek or receive any fee or remuneration of any kind that:

(1) Is based on the amount of the assistance or the number of units that may be provided by the Department; or

(2) Is contingent in any way on an award of assistance by the Department, except where:

(i) Services are provided to a public or private nonprofit entity applying for the award or allocation of assistance; and

(ii) All or part of the professional services related to a project are donated to the nonprofit entity in the event assistance for a project is not awarded. [NOTE: The term "professional services," as used in this part 86, is not synonymous with "professional and technical services," as that term is used in part 87, which implements the "Byrd" Amendment.]

Section 13(a)(4) covers situations in which one person hires an outside party to perform lobbying activities. It also reaches situations in which an entity pays a partner, associate, or other officer or employee of the entity to influence the award of HUD assistance. This could occur in two circumstances: first, where the entity wants to lobby HUD, and calls upon its people to do the work; and second, where an entity is retained to provide the services, and uses its people to carry out the activities. In either of these circumstances, the rule's prohibitions on percentage and contingency arrangements apply to the consideration passing between the entity and its people.

It should be noted that section 13(a)(4)'s prohibition only covers situations in which the contingency or other arrangement is tied to a specific award of assistance. Partner shares and bonuses that are calculated on a general basis, not tied to a specific assistance award, do not violate section 13(a)(4).

The rule is limited to *direct communication* with HUD employees or officials. Communications that do not involve direct contact are not covered.

The rule contains an exception for compliance with HUD requirements and procedures. It permits lobbying fees to be contingent when they are incurred for activities in compliance with HUD requirements.

The rule gives the term, "award or allocation of financial assistance," the broadest possible interpretation. It provides that section 13(a)(4) reaches *any* award of assistance, including assisted housing contract amendments, extensions, and renewals.

Examples.

—A, a developer, retains B, a consultant, to prepare supporting documents for A's application for a HUD grant. A agrees to pay B, if he gets the award. B prepares the documents, and returns them to A for submission to HUD.

This contingency arrangement is permissible because B does not contact HUD directly.

—A, a developer, enters into an agreement with B, an architect, regarding plans necessary to support A's application for an award of financial assistance from the Department. B submits the plans directly to HUD. A agrees to pay B, if he gets the award.

Even though B made a direct contact with HUD, the contingency arrangement is permissible, because the plans prepared by B are being done in compliance with a HUD requirement.

—A, a developer, gives B, a consulting firm, a flat fee to influence the award of a HUD grant. B asks C, a member of its staff, to make the necessary HUD contacts, and tells C that, in addition to his regular salary, he will receive a bonus, based on the size of the award, if the lobbying is successful.

The arrangement between A and B is not covered: it is a flat-fee arrangement. B's arrangement with C, however, is impermissible. It includes a prohibited percentage fee arrangement.

—A, a developer, gives B, a consulting firm, a flat fee to influence the award of a HUD grant. B asks C, a member of its staff, to make the necessary HUD contacts. C receives his usual salary while working on the award.

A receives the award. At the end of the year, C receives a bonus as part of B's annual effort to reward its employees for their performance during the year. The amount of the bonus that C and the other bonus awardees receives is based in part on the successful lobbying effort.

Receipt of the bonus does not run afoul of section 13(a)(4), since it was not tied to the specific lobbying effort. C was not led to believe that his compensation depended on a successful lobbying effort; he received only his regular salary during the consideration of the grant. C received the bonus as part of the firm's overall program for rewarding high performers. The bonus reflected C's stellar performance, not the fact that he successfully lobbied on A's behalf. In this case, the fact that C's work formed the basis for part of the award is not relevant.

—A, a developer, gives B, a consulting firm, a flat fee to influence the award of a HUD grant. B asks C, a member of its staff, to make the necessary HUD contacts. C receives his usual salary while working on the award. A receives the award. B gives C a bonus for his efforts from the fee proceeds from A.

The bonus is an impermissible. It is tied to the successful lobbying effort.

—A, a developer, asks two members of his firm to lobby HUD on a pending grant. He offers to compensate them in part on a contingency basis.

This arrangement is covered. The relationship between an entity and its employees is covered by the statute.

—A, a developer, enters into an agreement with B, a consultant, under which B is to contact certain HUD officials regarding A's request for a contract amendment for a Section 202 project. B is to be paid on a percentage-fee arrangement.

This contingency arrangement is not permissible because it involves an award of financial assistance.

VI. Additional Examples of Actions Subject to Part 86¹³

1. Duty to Keep Records, Report, and Register

—A pays B (who is not regularly employed by A) to contact an officer or employee of HUD regarding obtaining a favorable decision on A's application for financial assistance.

A must keep records of this transaction and report it to HUD between January 1 and January 10 of the next year. B must register with HUD within 14 days after being retained by A and must report it to HUD between January 1 and January 10 of the next year.

—A promises to contact C (a corporate executive friend) about a job for B's wife, if B will contact D (a friend of B's at HUD) regarding a favorable decision on A's application for financial assistance.

A must keep records of this transaction and report to HUD, as stated in the above example, and B must register and report, as stated in the above example.

—A arranges for B and B's family to take a trip to Europe, if B will contact his old employer at HUD regarding a favorable decision on A's application for financial assistance.

A must keep records as stated above, and B must register and report.

2. Dollar Threshold—Keeping Records, Reporting, and Registering

—A pays B \$6,000 to contact B's friend at HUD regarding a favorable decision on A's application to increase the award of A's financial assistance. This is A's only dealing with HUD—but B has also been retained by other applicants for HUD assistance and already has received \$4,000.

A must keep a record of this transaction, but need not report it. Records must be kept on *all* covered agreements/expenditures, irrespective of the amounts involved. The \$10,000 threshold only applies to § 86.20's reporting requirements.

B must register within 14 days after being retained by A, and should have registered for each of the other applicants for whom B was lobbying. B must also report all of these transactions between January 1 and January 10 of the next year, since the total of B's HUD business exceeds \$10,000.

—A pays B and three other friends \$3,000 each to use their influence and connections with HUD officers to obtain a favorable decision on A's application for financial assistance. B and the other three friends are professional lobbyists, but this is their only contact with HUD.

A must keep records and report, but B and the other three friends need only register.

—A pays B \$1,000 to use his influence and connections with HUD officers and employees to obtain a favorable decision on A's application. B is a lobbyist and is also working to obtain favorable HUD

¹³ Unless otherwise indicated, the examples assume that the applicable dollar thresholds have been reached.

decisions for two other clients, each of whom has paid him \$5,000.

A must keep a record of this transaction, but need not report it. B must register within 14 days of being retained by A and must report all of his lobbying activities with HUD for that year.

—If A's total expenditures for all actions of influence or attempting to influence are less than \$10,000 for the calendar year, then A is exempt from the reporting requirements of Part 86, *but A still must keep records of each transaction.*

—If B's total compensation for the calendar year is less than \$10,000, then B is exempt from the reporting requirements of Part 86. *However, B must still register with the Department each time he is retained for lobbying purposes.* B's total compensation is determined by adding all of the compensations received by B during a given calendar year, for all of the work done with the Department in attempting to influence decisions of the Department.

—A pays B \$15,000 to make contacts at HUD to push along A's application for an award. B makes a number of calls to HUD officials on A's behalf.

Between 1/1 and 1/10 of the next calendar year, A must report the \$15,000 expenditure. A need not treat the phone calls as a new "expenditure," since the calls were part of the overall original agreement. Similarly, B need not submit a new registration, although he will be required to report on the calls in his registrant's report.

If A and B later renegotiate the amount of the agreement from \$15,000 to \$10,000, neither A nor B can reduce the reported \$15,000 amount. For all purposes, the original agreement of \$15,000 stands.

On the other hand, if A agreed within the same reporting year as the original agreement to pay B an additional \$3,000 for some additional contacts at HUD, still in furtherance of influencing HUD's actions on A's application, than A's and B's reports must reflect the higher amount. If the initial agreement and the increase occurred in different years, and the payment was not contemplated by the original agreement, the increase is reportable by both A and B in the year in which the expenditure was made. In either case, B must update its registration.

3. Mortgage Insurance

—A, a mortgage lender, retains B to help it gain approval as an FHA lender. B is also retained by C to help it gain approval as a GNMA issuer. B communicates with several HUD employees about these issues.

A, B, and C are all subject to Part 86. Securing HUD approval as a mortgagee or a GNMA Issuer is a form of "assistance" covered by Part 86. FHA approval is part of the process by which mortgagees secure financial assistance in the form of insurance. The GNMA guarantee that is afforded the investor enhances the value of the securities, thus, benefiting the issuer.

—A, a mortgagor, retains B, a lawyer, to obtain HUD's written approval to deviate from the usual terms of the Regulatory Agreement, so that A might engage in another business or activity. B

communicates with several HUD employees about this issue.

A and B are subject to Part 86. Securing HUD's approval to deviate from the terms of the Regulatory Agreement is a management action covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to obtain HUD's permission for secondary financing under circumstances other than those permitted by HUD regulations. B communicates with several HUD employees about this issue.

A and B are subject to Part 86. Securing HUD's approval to deviate from HUD regulations is a management action covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to obtain waiver of a HUD regulation (e.g. under 24 CFR 219.130, the general waiver authority regarding the Flexible Subsidy Program for Troubled Projects, or under 24 CFR 265.4, the general waiver authority regarding the transfer from non-profit to profit motivated ownership for multifamily housing projects with HUD-insured or HUD-held mortgages).

A and B are subject to Part 86. Obtaining such a waiver is a management action covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to negotiate on A's behalf for changes in the mortgage form. (Such changes might include terms regarding payment under 24 CFR 207.256b, the maturity date, partial payment of mortgage, the interest rate, or deferral of payment to reserve for replacements fund.)

A and B are subject to Part 86. Changes in the standard terms of the mortgage instrument are management actions covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to negotiate on A's behalf for a change in the terms of A's mortgage regarding the prepayment restriction and the prepayment penalty charge, for example, in the prepayment of bond-financed mortgages under 24 CFR 207.14(d).

A and B are subject to Part 86. Negotiations of terms, such as prepayment restrictions and prepayment penalties, are management actions covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to obtain from HUD a waiver of a prescribed HUD form and the procedures set out in the HUD handbook regarding the submission of the form. Neither the form nor the handbook procedures for submission of the form are mandated by statute or set forth the pertinent HUD regulation.

A and B are subject to Part 86. Waiver of HUD forms and handbook procedures are management actions covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to assist him, by virtue of his friendships with HUD personnel, in obtaining HUD's approval for the lender to increase A's mortgage amount by re-evaluating certain factors, such as construction cost.

A and B are subject to Part 86. Approval of a mortgage increase is a management action covered by Part 86.

—Before HUD makes a determination to terminate A's insurance contract, A, a

coinsuring lender, pays B, a lawyer, to contact key officials at HUD to convince them that A has not committed fraud or made a material misrepresentation with respect to the Contract of Coinsurance.

—A and B are subject to Part 86. The determination to terminate a Contract of Coinsurance is a management action covered by Part 86. A cannot take advantage of the exception for litigation, unless and until A becomes a party to a formal proceeding.

4. Officials of State and Local Government

—A is the mayor of a small city. He asks his special assistant and his director of community development to call HUD officials in support of a grant application that the city has pending with HUD. The mayor calls the Department as well.

The mayor, the special assistant, and the CD director are not covered by Part 86. State and local elected officials, the political appointees that make up their personal staffs, as well as full-time, appointed officials who serve in policy-level positions are not subject to the rule.

—A is the mayor of a small city. B is the elected head of a water and sewer district within the city. They both contact HUD for a specific award of assistance.

Neither A nor B is subject to the rule. The exclusion for State and local officials turns on whether the official is an elected State or local official, not on the nature or size of the jurisdiction involved.

—B is a mayor of a city. A is the county executive of a neighboring county, who pays B a small stipend to lobby HUD on behalf of A's application for a grant. B makes the appropriate contacts.

Both A and B are subject to Part 86. The exclusion for State and local officials is limited to representation of the State or local government that the officials serve.

—A is a private supplier of equipment who stands to gain if the city wins a HUD contract. A pays B, a city official not connected to the contract, to contact HUD in support of the contract.

B may not claim the exception for State and local officials. B is not contacting the Department in his official capacity with the city.

—A is the director of a community development agency. A asks B, an employee with line responsibility for administering a demonstration program, to contact HUD to influence a grant award for the program.

A may not claim the exception. If A had called HUD directly, he would have qualified, since he occupies a policy-level position. Requesting B to make the contact, however, deprives A of the exception, since B is not a policy-level official: he does not set policy, he merely executes it.

—B does not occupy a policy-level position, but his diligence has earned him a policy seat at the mayor's table. B may not claim the exception, since the individual claiming it must actually encumber a policy-level position. *Ad hoc* arrangements, without

that incumbency, are insufficient to invoke the exception.

5. Regularly Employed Officers and Employees

—A is a national association, with a full-time governmental affairs staff that is responsible, among other things, for representing the association before HUD. A assigns B, one of its government affairs employees, to represent the association in a management action involving C, a member of the association.

A must keep records and report on the portion of B's salary that is allocable to the transaction. A cannot qualify for the "regular employment" exception to § 86.20's reporting requirements, since that exception only runs to officers or employees who are employed by the person that requests or receives the financial assistance or is involved in the management action. In the example, the association's interest in the matter is as C's representative.

—A, a corporation that engages in HUD development work, submitted a grant application to the Department on December 31, 1990. On January 31, 1991, A asks B, an employee, to contact HUD to push for favorable consideration of the application. As of B's assignment—January 31, 1991—B has been an employee of A's for 135 working days.

A cannot claim the "regular employment" exception. The statute specifies that the exception only runs to an officer or employee who is employed by the person for at least 130 working days within one year immediately before the date of the submission that initiates the Department's consideration of the person for receipt of such assistance.

The 130-day determination must be made at the time of the triggering event for each request for financial assistance or management action. A snapshot is taken: those who have been employed for 130 days during the preceding year will be considered "regularly employed;" those who have not been, will not. The fact that B meets the 130-day threshold at a later date in the award process is irrelevant.

—A asks B and C, two of his employees, to lobby HUD on behalf of a pending grant application submitted by A. Neither B nor

C is a full-time employee, but C participates in a work-study program offered by A to improve his education.

A can qualify for the "regular employment" exception for C, but not B. The rule requires that regularly employed officers and employees be employed on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children. The rule also requires that the employee have meaningful responsibilities and duty hours not less than individuals of similar rank and responsibilities.

—A asks B and C, two of its employees, to lobby HUD on behalf of a pending grant application submitted by A. Both are full-time employees. B qualifies for the "regular employment" exception; C does not.

The following elements of Part 86 apply to each of the players:

—A must keep records on both B and C. The "regular employment" exception only runs to the rule's expenditure reporting requirements. It does not affect A's responsibility to keep records.

—A must report on C, but not B. The exception relieves A of the responsibility of reporting on B.

—B must register, but need not report. The "regular employment" exception reaches the reporting requirements of both A and B, but not B's duty to register.

—C must register and report. C does not qualify for the exception, and, therefore, must meet all Part 86's requirements.

—On June 15, 1991, HUD decides to undertake a management action against A, a developer. On July 1, 1991, the Secretary approves the action. On July 5, 1991, the Department informs A of the action.

The 130-day period must be counted backwards from July 5, 1991—the day on which the action was communicated outside the Department—the point at which the management action was initiated.

6. Registration Information and Reporting

A retains B, a law firm, to lobby on behalf of A's grant application. B subcontracts part of the job to C, a consultant, and another part to D, another law firm. B tells C that he is

working on behalf of A; B does not inform D of this.

D's registration must only identify B as the person in whose interest he is working. D had no reason to know of A's involvement in the transaction.

C must identify both B and A as persons in whose interests C is working, since B advised C of this fact.

—A retains B to lobby on A's behalf. The agreement provides for a \$5,000 payment broken down as follows: \$2,000 for direct communications with HUD employees, \$2,000 for travel and accommodations, and \$1,000 for "personal expenses."

B must report on the entire \$5,000. The amount of the agreement is the determinant. B must report on all amounts received, and all amounts expended, under the agreement during the reporting year.

—A, a national association, asks B, an employee, to undertake an assignment of lobbying HUD for a specific grant award. A also hires C, an outside consultant, to work with B. A pays B and C from general membership dues.

C must register with the Department within 14 days of the agreement to work with B. B must register with HUD within 14 days of notice of the new assignment. In the case of an employee, such as B, the "expenditure" is A's salary to B for the lobbying activities, and the event that triggers the registration requirement is the assumption of the new duties.

—A retains B to "look into" a management action involving A. The agreement provides no specific activities to be undertaken by B. B believes, however, that a contact with HUD officials will be necessary.

B must register within 14 days of this belief. The duty to register attaches at the point that B believes that the contact will be likely.

VII. Further Information

Anyone who has a question, or wants additional information, regarding this Appendix, or any other aspect of part 86, should contact the Office that is responsible for administering this part located within the Department.

APPENDIX B TO PART 86—CHART

Persons covered	Requirements	Exceptions
Persons Making Expenditures To Influence		
—A person that makes, or that enters into an agreement to make, a covered expenditure to a person.. —A person that makes, or that enters into an agreement to make, a covered expenditure to a person on behalf of another person.. —A person on whose behalf a covered expenditure is made to a person, or an agreement to make a covered expenditure to a person is entered into. (§ 86.20(a)(1)).	1. <i>Record keeping.</i> Keep records on all agreements and expenditures for a two-year period. (§ 86.20(b)).	1. <i>Record keeping:</i> —Compliance with HUD requirements. (§ 86.20(d)). —Litigation. (§ 86.20(e)). —Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.20(f)). —Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure").

APPENDIX B TO PART 86—CHART—Continued

Persons covered	Requirements	Exceptions
	2. Reporting...... Between January 1 and 10 of each year, report on all agreements and expenditures made during the preceding calendar year. (§ 86.20(c)).	2. Reporting: —Payment of reasonable compensation to a regularly employed officer or employee of the person that requests or receives financial assistance. (§ 86.20(c)(3)). —Sum of the amounts of all reportable expenditures and agreements during the reporting year is less than \$10,000. (§ 86.20(c)(4)). —Compliance with HUD requirements. (§ 86.20(d)). —Litigation. (§ 86.20(e)). —Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.20(f)). —Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure").
—A person engaged pursuant to an agreement to make an expenditure. (§ 86.25(a)).	Persons Engaged To Influence 1. Registration...... Register with the Department within 14 days of being engaged. (§ 86.25(b)). 2. Reporting...... Between January 1 and 10 of each year, report on all monies and other things of value expended or received during the preceding calendar year. (§ 86.25(c)).	1. Registration: —Employees of entities retained. (§ 86.15—definition of "retained"). —Compliance with HUD requirements. (§ 86.25(d)). —Litigation. (§ 86.25(e)). —Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.25(f)). 2. Reporting: —Certain partners, associates, and other officers and employees assigned to perform lobbying services by an entity that has been retained for that purpose. (§ 86.15—definition of "retained"). —Receipt of reasonable compensation by a regularly employed officer or employee of that person that requests or receives financial assistance. (§ 86.25(c)(3)). —Sum of the amounts of all reportable receipts during the reporting year is less than \$10,000. (§ 86.25(c)(2)). —Compliance with HUD requirements. (§ 86.25(d)). —Litigation. (§ 86.25(e)). —Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.25(f)).

Dated: April 2, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-11194 Filed 5-16-91; 8:45 am]

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Registered Federal Law

Friday
May 17, 1991

Part III

Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Notice of FY 1991 Competitive
Discretionary Grant Programs and
Availability of the Office of Juvenile
Justice and Delinquency Prevention
Program Announcement Application Kit,
1991

DEPARTMENT OF JUSTICE**Office of Juvenile Justice and
Delinquency Prevention****Notice of Fiscal Year 1991 Competitive
Discretionary Grant Programs and the
Availability of the "Office of Juvenile
Justice and Delinquency Prevention
Program Announcement Application
Kit, 1991"**

AGENCY: Office of Justice Programs,
Office of Juvenile Justice and
Delinquency Prevention, Department of
Justice.

ACTION: Public announcement of the
Fiscal Year 1991 Competitive
Discretionary Grant Programs and the
availability of the "Office of Juvenile
Justice and Delinquency Prevention
Program Announcement Application Kit,
1991."

SUMMARY: The Office of Juvenile Justice
and Delinquency Prevention (OJJDP) is
publishing this Notice of Competitive
Discretionary Grant Programs and
announcing the availability of the OJJDP
Application Kit. Each program
announcement that follows contains
specific instructions on competitive
program requirements, including
eligibility requirements and selection
criteria. Following the program
announcement is a section that
summarizes general application and
administrative requirements.

The Application Kit contains
application forms (Standard Form 424),
the OJJDP Peer Review Guideline, the
OJJDP Competition and Peer Review
Procedures, and other supplemental
information relevant to the application
process.

DATES: Each program announcement
specifies the due date for applications.
Applications delivered after the
deadline dates will not be considered.

ADDRESSES: Office of Juvenile Justice
and Delinquency Prevention, 633
Indiana Avenue NW., Washington, DC
20531.

FOR FURTHER INFORMATION CONTACT:
Application materials and/or program
inquiries are to be addressed to the
attention of the OJJDP staff contact
person identified in the specific program
announcement.

SUPPLEMENTARY INFORMATION: Pursuant
to the provisions of section 204(b)(5)(A)
of the Juvenile Justice and Delinquency
Prevention Act of 1974, as amended
(hereinafter JJDP Act), 42 U.S.C.
5614(b)(5)(A), the Administrator of
OJJDP published a Final Comprehensive
Plan describing the funding activities
which OJJDP intends to carry out during

Fiscal Year 1991. The final plan includes
activities specified in parts C and D of
title II of the JJDP Act (42 U.S.C. 5651-
5665a and 42 U.S.C. 5667-5667a). The
final plan was published February 14,
1991, in the *Federal Register*.

This Notice contains additional
information on OJJDP's competitive
discretionary programs as well as the
announcement of the OJJDP Application
Kit availability. Programs are listed in
accordance with the Office of Justice
Programs (OJP) priorities.

Program Evaluation*Evaluation of Cities in Schools Program
Purpose*

The purpose of this program is to
conduct a process and impact
evaluation of (1) the Cities in Schools
(CIS) program replication process and
the related training and technical
assistance provided by the CIS national
organization to States and local
communities, and (2) the effectiveness of
the CIS model as implemented by States
and local communities.

Background

The CIS national organization
provides training and technical
assistance to State and local
communities that wish to replicate the
CIS model in their local areas. The
mission of a local CIS Program is to
reduce the rate of school dropouts by
providing a broad range of needed
services to at-risk students and their
families in a personal, accountable and
coordinated manner. This is
accomplished either at a local public
school site or an alternative school
location. By addressing the factors that
cause youth to drop out of school, the
local CIS programs endeavor to keep
youth in school. Thus the students can
continue to earn academic credits and
graduate from high school better
equipped to make future life choices.

Started in 1977, CIS operates in over
50 cities and counties at more than 200
schools where 18,000 at-risk students
and their families are receiving
coordinated social services. CIS
provides services to an additional 15,000
students on an as-needed basis at the
same school sites. The objective is to
reach, on an annual basis, 58,000 at-risk
youth and their families by mid-1992.

Since 1987, CIS has been receiving
joint funding from the Departments of
Labor (DOL), Health and Human
Services (HHS), and OJJDP. The
Department of Commerce (DOC) joined
this funding effort in 1990.

At this time of CIS planned
expansion, it is appropriate to evaluate
the CIS Program to inform government

policy makers, and to identify where
improvements, if any, need to be made.
DOL and the Department of Education
(ED) are assisting OJJDP in this
evaluation project.

Goal

To conduct a process and impact
evaluation of the CIS Program. Overall,
the evaluation will determine:

- (1) How effectively CIS has provided
States, cities and communities with
help, including training and technical
assistance, in establishing the CIS
Program;
- (2) How effectively the local programs
have implemented the CIS model; and
- (3) How effectively the local programs
have reduced the number of school
dropouts at CIS project sites.

Objectives

- To identify the strengths and
weaknesses of the national and local
programs in carrying out the three
components of the goal of this research
project as stated above;
- To describe CIS sites including
those that are part of the DOL's nine
Service Delivery Areas (SDAs),
comparing them with the CIS model and
noting similarities and differences;
- To identify conditions that promote
institutionalization of the CIS model at
the local level as well as those that
inhibit institutionalization at the local
level;
- To identify approximately 10
successful programs which implemented
the CIS model and to focus on the
common and unique components of
these programs and describe how they
forged community and private sector
partnerships, how they repositioned
human services, how they overcame
obstacles and how they developed
personal, accountable, and coordinated
services at the local level;
- To determine the impact of the CIS
programs on the schools and on the
student dropout rates in selected
jurisdictions;
- To provide a cost-benefit analysis
of the CIS model as implemented by the
communities that have committed
themselves to the CIS program in
carrying out the mission of CIS and to
present the costs and results of the
program in a form that will facilitate
decision making by those concerned;
and
- To disseminate the major findings
and results produced through this
research project.

Program Strategy

The process and impact evaluation
will assess the CIS replication process

in a limited number of both mature and newly established CIS local programs, including those in the SDAs, and those considered to be successful in achieving the objectives of the CIS program. The evaluation will include three study components:

1. A study of the CIS national organization, which will evaluate the replication process and the transfer of knowledge and skills from the CIS national organization to State and local CIS programs;

2. A study of a representative sample of CIS sites, which will determine how effectively the local CIS programs have reduced the number of school dropouts at CIS project sites, and will compare costs and benefits of the CIS program as used in the communities; and

3. A study of exemplary CIS programs, which will examine the effectiveness of approximately 10 successful programs, examining what works best in the CIS program and how this can be replicated in other communities.

Implementation strategies of the CIS national office will be measured at the State and local levels. The degree to which local schools have institutionalized the program within the schools will be assessed and analyzed.

As part of the evaluation, school administrators, teachers, CIS students and their families (past and present clients), community and private sector leaders, and social service providers will be interviewed. Records and documentation will also be reviewed and analyzed.

To provide direction, guidance and oversight to the program in carrying out its functions, a project advisory board will be appointed. The advisory board, which will be co-selected by the grantee and the OJJDP, will consist of persons experienced and knowledgeable in evaluation, school administration, and other facets of the study. They will be kept informed during the project and will meet three times during the course of the project to review preliminary and final evaluation plans, strategies and products.

In developing a responsive proposal, applicants will also be required to address the following specific tasks related to the conduct of the study. Specific tasks for each of the three study components are outlined below:

Required Tasks

1. *Study the CIS National Organization.* This component will analyze the work done by the CIS national organization in disseminating and assisting in the implementation of the CIS model in new communities. This will involve the following tasks:

- Document the key elements of the CIS model to be replicated;
- Document the structure of the CIS national organization and regional offices;

- Review and describe the National Center for Partnership Development (NCPD);

- Interview and accompany CIS staff on visits to programs in the replication process and newly established programs, including any SDA sites in this stage of development;

- Interview key participants in the local CIS program, including students and parents, CIS staff, school staff, repositioned staff, CIS board members, and other private sector and government participants; and

- Recommend improvements in the CIS program, if needed.

2. *Study a Representative Sample of CIS Sites.* This component will analyze the effectiveness of the CIS program in a representative sample of mature CIS projects (schools). This will include the following tasks:

- Select a sample of CIS schools within CIS programs. To the extent possible, include programs from different geographical regions and city sizes. Both the program and the school project will have been in operation for a minimum of two years. The sample should include both middle schools and high schools. The sample should also include all CIS projects that have been operated by Job Training Partnership Act (JTPA) SDAs through the joint CIS/Private Industry Council (PIC) partnership programs in Arkansas, Michigan, and Virginia.

- Assess program outcomes for CIS students enrolled in the sample schools, including measures of attendance, discipline problems, academic achievement, and dropout rates. For middle schools, data should also measure advancement to high school; for high schools, data should also document the students' activities (further education, training, employment, etc.) after leaving/completing school.

- Document the at-risk status of CIS-enrolled students, their level of participation in the CIS program, and the degree to which the local program objectives for CIS students have been achieved, specifically including measures of attendance, discipline problems, academic achievement, and dropout rates.

- Conduct site visits to describe the CIS projects operated by JTPA SDAs in Arkansas, Michigan, and Virginia, regardless of when the program became operational. Not all JTPA SDA sites need to be visited, but data should be

collected from all of them. The visits should include data gathering and interviews with school officials, teachers, CIS-enrolled students, and staff of participating community agencies, including the SDAs. The visits should include observations of the CIS school projects and incorporate interviews with school district officials and any local staff that oversee CIS programs in the school district.

- Analyze the costs and benefits of the program in each of the representative sites in relation to the total site costs of participating in program development, installation and maintenance. Consideration should be given to unintended results and to measuring secondary benefits related to the implementation of the CIS project in terms of the quality and amount of service delivery to children or other improvements related directly to the program.

- Identify conditions that promote the institutionalization of the CIS Program and those that inhibit it at the local level.

3. *Study of Exemplary CIS Programs.* This component will examine the effectiveness of the CIS model in approximately 10 exemplary programs. This will involve the following tasks:

- Identify approximately 10 exemplary programs which implemented the CIS model, focusing on the common and unique components of these programs. Describe how they forged community and private sector partnerships, how they repositioned human services, how they overcame obstacles, and how they developed personal, accountable and coordinated services at the local level;

- Identify a school within each of these exemplary programs, that is considered to be exemplary. Where possible, the procedure should guarantee a representation of both middle schools and high schools;

- Visit each of the exemplary schools. The visits should include interviews with CIS staff, school officials, teachers, students, and participating community agencies;

- Review the overall program and collect data to assess program outcomes for CIS students enrolled in the schools, including measures of attendance, discipline problems, academic achievement and dropout rates. For middle schools, data should measure advancement to high school; for high schools, data should measure school completion; and

- Identify the factors that appear to account for making these CIS sites and schools exemplary. In particular,

examine the linkages between the schools and participating community agencies, both in terms of how the linkages were developed and how they are structured.

Required Products

The following products, which are required over the course of the program, must be submitted to OJJDP and reviewed by the project advisory board:

1. A complete Information Collection Package for submission to the Office of Management and Budget in accordance with the regulations under the Paperwork Reduction Act, including data collection instruments and protocols.

2. A detailed plan for data collection, analysis, evaluation and preparation of reports.

3. A report on the evaluation of the CIS national organization replication process.

4. A report on the effectiveness of implementation of the CIS model by the local projects.

5. A report on the DOL-sponsored CIS projects located in SDAs.

6. A report on the effectiveness of local projects in reducing the number of school dropouts at CIS project sites.

7. A report on exemplary CIS projects.

8. A comprehensive summary report of findings and conclusions.

Special Issues To Be Addressed in Application

1. Evidence that the applicant understands the goals and mission of the CIS Program.

2. How the applicant proposes to select exemplary sites for the third component of this study.

3. A description of the most similar project to this one that the applicant has conducted.

4. Evidence that the firm and staff have worked on projects directly involving public school systems and access to and analysis of school records.

Eligibility Requirements

Applications are invited from public and private agencies, organizations, educational institutions, or combinations thereof. To expand the pool of eligible candidates, applications will be accepted from for-profit organizations, provided they agree to waive any profit or fee and accept only allowable costs.

Applicants must demonstrate that they have knowledge and/or experience in the following: design and implementation of large scale, multisite research; problems of at-risk youth; the school dropout problem; issues surrounding the delivery of local,

existing, social services (education, health and human services) to at-risk youth and their families; building a local coalition to support new programs; developing public/private partnerships; and delinquency prevention programs, policies and resources.

Applicants must further evidence the management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Applicants must provide a description of the project management structure which includes a proposed staffing plan, brief position descriptions with roles and responsibilities, and descriptions of relevant staff experience and expertise. Resumes of key project staff must be included as an appendix to the application. The project director must devote a minimum of 50 percent of his or her time to this effort.

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria.

1. The problem to be addressed by the project is clearly stated. (20 Points)

- The applicant demonstrates broad knowledge of evaluation strategies and practices and is particularly aware of the at-risk youth school dropout problem. (10 Points)

- Problem to be addressed is based upon issues that have significant impact on the effectiveness and cost-benefit of the projects that have been established as CIS Programs. (10 Points)

2. The objectives of the proposed project are clearly defined. (10 Points)

- There are specific strategies described for the attainment of each objective. (5 Points)

- Objectives are specific and measurable. (5 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (30 Points)

- Applicant explains how the attainment of the objectives will give a comprehensive view of the national and local status of the CIS Program. (10 Points)

- Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. (10 Points)

- Applicant demonstrates knowledge and experience in multisite research, at-risk youth, the school dropout problem, issues surrounding the delivery of social services at the local level, building local coalitions, establishment of public/

private partnerships, and delinquency prevention. (10 Points)

4. The project management structure is adequate to successfully conduct the project. (20 Points)

- The adequacy of the general and specialized experience and competence of key project staff to design and conduct the evaluation. (15 Points)

- Adequacy of the management structure and to successfully conduct the project. (5 Points)

5. Organizational capability is demonstrated at a level sufficient to support the project successfully. Applicant provides an organizational capability statement which demonstrates that the applicant has the technical, substantive and financial capabilities to administer the project effectively. (10 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken. (10 Points)

- Application must include a complete, justified budget with budget narrative for all proposed costs. (5 Points)

- Applicant demonstrates economic efficiency in program development, implementation and administration. (5 Points)

Award Period

One cooperative agreement will be awarded for a 2-year period.

Award Amount

Up to \$700,000 will be available for this project from OJJDP, DOL, and ED.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the *Federal Register*. Those applications sent by mail should be addressed to Jeffrey Slowikowski, Research and Program Development Division, OJJDP, 7th Floor, 633 Indiana Avenue NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 782, 633 Indiana Avenue NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except

Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Jeffrey Slowikowski, Research and Program Development Division (202) 307-5929.

Evaluation of the Juvenile Firesetter/Arson Program

Purpose

This program will evaluate the National Juvenile Firesetter/Arson Control and Prevention Program.

Background

Evaluation will be a primary component of the Office of Justice Programs (OJP) discretionary grant activities so programs that work can be identified, publicized and replicated and programs not proven to be effective can be discontinued.

Juvenile firesetters account for a substantial number of arson arrests. Although precise estimates of the incidence and cost of juvenile firesetting and arson prove elusive because of the lack of adequate data and the general underreporting of arson, data suggest that the magnitude of juvenile arson and firesetting is considerable. The Uniform Crime Report indicates that approximately 40 percent of arson arrestees are juveniles; other estimates place the proportion at over 50 percent. Data from the National Fire Protection Association indicate that the cost of juvenile arson approaches \$1 billion per year.

OJJDP, in concert with the United States Fire Administration (USFA), began assessing the problem of juvenile arson and firesetting in 1987 to aid communities in controlling and preventing juvenile arson. A project was initiated to examine the incidence of juvenile firesetting and to develop an improved and effective prevention program.

The Juvenile Firesetter program consists of four stages: (1) An assessment of the problem of juvenile firesetters and selected programs; (2) a comprehensive description of a model firesetter program; (3) the development of training and technical assistance packages for the implementation of this model; and (4) the selection of sites for demonstration of the model. The model design has been completed and is now being prepared for testing in four to six communities. OJJDP is issuing this solicitation to evaluate the model.

Goal

OJJDP, in cooperation with USFA, is planning to assist four to six jurisdictions in a test of the Juvenile

Firesetter/Arson Control and Prevention Program. Concurrently, OJJDP and USFA will sponsor an evaluation of the Juvenile Firesetter/Arson program.

Objectives

- To evaluate the effectiveness of the developed model in controlling the problem of juvenile firesetting;
- To evaluate the implementation process;
- To identify secondary or unexpected effects of the program; and
- To recommend programmatic modifications.

Program Strategy

The evaluation must examine the following aspects of the Juvenile Firesetter program:

A. *The process used to implement the program.* The model developed by the grantee consists of the following components: (1) Program management information; (2) intervention plan development; (3) training of personnel; and (4) referrals or links with the juvenile justice system and other agencies. This model must be evaluated on soundness of design and capacity for implementation. A more detailed explanation of the developed model will be available to applicants.

B. *The specific abilities of the test communities.* While the program itself may be effective, the environment in which it is implemented can have a significant impact on the ultimate success in the test community. The impact of the personnel, agency support and organizational environment into which this program is introduced must be examined and evaluated.

C. *The effectiveness of the model program.* To be successful, the model must evidence a positive change in the attitudes and behavior of the juvenile participants. As a component of this analysis, the nature of the firesetting problem in the community must be assessed. The program must then be examined to determine if it accurately and successfully addresses the specific circumstances of the community.

D. *The completeness of the program materials.* The materials developed for the program model must achieve two goals: (1) They must provide sufficient information to implement the program successfully; and (2) they must provide this information effectively.

E. *The method of referral to the program.* The success or failure of the model can be affected by the method(s) used to refer juveniles to the program and whether they produce a bias either in favor of or against participation in the program.

F. *Experiences and perceptions of local participants.* A complete evaluation must include an examination of the experiences of local officials who have implemented the model program and their assessment of the program.

Further information regarding the program description will be available to applicants. All organizations eligible to apply to conduct this evaluation should request the Application Kit and additional information on this project. (See contact below.)

Eligibility Requirements

Applications are invited from public and private agencies, organizations, educational institutions or combinations thereof. In order to expand the pool of eligible candidates, applications will be accepted from for-profit organizations provided they agree to waive any profit or fee and accept only allowable costs.

Applicants must demonstrate that they have experience in designing and conducting multisite evaluations. Consideration will also be given to the following:

- (1) Demonstrated knowledge of adult or juvenile arson programs;
- (2) The development of procedure manuals for training and technical assistance;
- (3) The issues involved in multi-agency cooperation, particularly with regard to juvenile justice and social service agencies; and
- (4) The implementation and maintenance of programs designed to intervene in particular types of juvenile behavior.

Applicants must further evidence the management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Selection Criteria

Applicants will be rated on the extent to which they meet the following selection criteria:

1. *The problem addressed by the Juvenile Firesetter/Arson program is clearly stated.* Applicants must demonstrate a clear understanding of the issues underlying juvenile arson and the development of programs to prevent or intervene in such behavior. The applicant must also demonstrate a strong background in evaluation issues, particularly regarding programs designed for the juvenile justice system. (10 Points)

2. *The objectives of the proposed evaluation are clearly defined.* Applicants must demonstrate a clear understanding of the goals and

objectives of this evaluation. Specific plans for achieving these goals and objectives must be clearly described. (25 Points)

3. *The evaluation design is sound and contains elements directly linked to the achievement of the specified objectives.* Applicants must present a clear design that will fully accomplish the stated goals of the evaluation. The design should outline the hypotheses to be tested, the research design appropriate for the study, the data collection plans, and other major activities to be undertaken. (30 Points)

4. *The project management structure is adequate to successfully conduct the project.* Applicants must provide an organizational description that depicts the roles and responsibilities of key personnel. The description should also include a list of key staff, indicating how the staff's qualifications are appropriate to achieving the evaluation goals. Applicants should provide resumes and biographies for the key personnel participating in the evaluation. The project director must devote a minimum of 50 percent of his/her time to this effort. (15 Points)

5. *Organizational capability is demonstrated at a level sufficient to support the project.* Applicants must demonstrate how their organizational experience and capabilities will enable them to fulfill the goals of the evaluation. (15 Points)

6. *Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken.* Applications must include a complete budget for all proposed costs. (5 Points)

Award Period

The project period will be 18 months.

Award Amount

Up to \$150,000 will be available for this project.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the *Federal Register*. Applications sent by mail should be addressed to Joseph Moone, Research and Program Development Division,

OJJDP, room 782, 633 Indiana Avenue NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 782, 633 Indiana Avenue NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays and Federal holidays.

Contact

For further information contact Joseph Moone, Research and Program Development Division, (202) 307-5929.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

Purpose

The purpose of this program is to implement in-service training and technical assistance in the use of developmental reading curricula for teachers of reading and English who instruct juvenile offenders in correctional institutions.

Background

One of the most common characteristics of juveniles incarcerated in correctional facilities in the United States is their poor experience in secondary education. A large percentage of incarcerated juveniles have demonstrated serious difficulty in reading and thus poor school achievement. Many researchers have shown how this difficulty is carried over into their lives upon release from corrections and seriously hampers their ability to compete successfully in society. There is a pervasive need to raise the level of literacy among juvenile offenders during their incarceration in juvenile correctional institutions.

Most reading instruction since 1950 has ignored the use of systematic and intensive phonics. Instead, students have been taught by a sight method, or whole-word approach, combined with incidental phonics. In this method words are viewed as a sequence of letters representing meaning rather than as a sequence of speech sounds that form the spoken word. Replicated research comparing the sight method with systematic phonics approaches continues to find the phonics method superior.

With few exceptions, adults who cannot read or have difficulty reading, regardless of age, reflect the same kind of problem that illiterate children do—they cannot read words accurately and fluently. As the research reveals, the problem is not a deficiency in analytic ability, but in knowing the alphabetic code and how it functions. Research literature suggests that the solution to this problem lies in curricula that promote systematic and intensive

phonics, direct instruction, and, in some cases, multisensory approaches to teaching and learning.

Such curricula have existed for some time. What is needed are teachers who are experienced in systematic and intensive phonics methods and are committed to using them.

Definitions

A. Literacy is the ability to accurately and fluently read and write what one can talk about, hear and understand. For this solicitation, the term literacy is not to be interpreted as some predetermined level of educational attainment.

B. Phonics is information about the relationships between the way we speak words and the way we spell them. English is an alphabetic language that, when written, uses letters to represent speech sounds. Instruction in phonics includes teaching a person to consciously identify the sounds and to recognize that letters are used to represent them. Such instruction enables a person to decode the names of unknown written words. Phonics is more likely to be useful when a person hears the sounds associated with most letters, both in isolation and in words, and when they are taught to blend together the sounds of letters to identify words.

C. Intensive phonics refers to teaching phonics on a regular basis—at least once a day—using the instruction time for practice and drill of the information being learned.

D. Systematic phonics refers to a process of teaching phonics that begins with the least difficult aspects of phonics, then carefully integrates successive units of phonics with what has previously been taught.

E. Direct instruction is teacher directed, with high levels of student interaction with the instructor. It is academically focused. Materials are sequenced in some logical hierarchy and structured. Goals are clearly stated. Adequate instructional time is provided. Subject matter is thoroughly covered. Student work is monitored. Practice and review are extensive. Teacher feedback is immediate and academically focused. The teacher establishes academic goals; selects materials compatible with student ability; and sets instructional tempo. Instruction, though structured, is not authoritarian; rather, the teacher creates a learning environment that encourages self-motivation through repeated task oriented success.

F. Multisensory approach to learning makes use of both the generative channels (speaking and writing) and receptive channels (seeing and hearing)

in the neurological process of learning. In learning the alphabetic sound/symbol system, this approach requires the learner to write the letter (engaging tactile and kinesthetic responses) while saying the sound(s) the letter represents. The generative act (saying the sound(s) while writing the letter or letter combination) is reinforced in the receptive channels by seeing the letter produced and hearing the sound(s) of it.

Goals

- To improve the quality of reading instruction in juvenile correctional institutions; and
- To help students to become proficient in reading and writing coherently what they can talk about, and aurally comprehend.

Objectives

- To develop competencies in correctional teachers in diagnosing individual decoding deficits and in assessing differences that may exist between silent reading comprehension and aural comprehension;
- To implement unique or innovative methods and strategies using intensive, systematic phonics;
- To provide technical assistance in using the new instructional strategies;
- To develop a cadre of reading instructors and volunteers, serving in juvenile correctional institutions, in intensive, systematic phonics and direct instruction; and
- To significantly improve reading comprehension of incarcerated juvenile offenders through the development of accurate and fluent reading skills.

Program Strategy

OJJDP will select two organizations to conduct this training and technical assistance program for teachers in juvenile correctional settings. These organizations will make instruction available to teachers and support staff. Instruction will focus on how to teach fluent and accurate reading expeditiously to students who cannot read. Instruction must include, but not be limited to, systematic and intensive phonics (or phonetics) and direct instruction. Instruction in how to assess student deficiencies and measure student progress will be included. Participants will be evaluated to ensure they know the alphabetic code and how it works. Teachers will demonstrate that they can apply instructional strategies for teaching fluent and accurate reading. Literacy experts will provide on-site technical assistance, monitor instruction and conduct on-site teaching in order to

allow professional and support staff to observe correct teaching procedures. Depending upon the length of instructional time, student achievement will be measured by either referenced or standardized achievement tests.

OJJDP will assume responsibility for attracting and selecting prospective teachers and institutions to participate in the training program. It is anticipated that at least 100 teachers will be trained by the two grantees in the 12 months of the first year's program.

The grantees will be responsible for handling all logistical arrangements for the conduct of the training.

Specific products to be completed during this project are:

- A plan for the delivery of the training and technical assistance.
- A curriculum for this particular target group.
- Teacher guides based upon a field tested curriculum.
- A formative assessment of the program, including recommendations for future implementation of the effort.
- A dissemination strategy for the curriculum, as it applies to the second and third year of the multiyear program.

Eligibility Requirements

Public and private institutions of higher education, as well as other literacy experts in the private sector, are eligible to apply. Private for-profit organizations must waive their fee to be eligible. Applications are invited from public agencies and private organizations which can demonstrate the capability and established expertise to provide effective in-service education and training that will significantly help teachers use systematic and intensive phonics and/or phonetics through direct instruction to advance literacy among juvenile offenders.

Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include information germane to the following six topics:

1. Organizational Capability.

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to

append one example of prior work projects of a similar nature to their application and a synopsis of its literacy instructional program.

Applicants must provide a list of key personnel responsible for managing and implementing the program. Applicants must present detailed position descriptions, qualifications and selection criteria for each position, whether they are salaried or staff, hired by contractor(s) of the grantee. In addition, if key functions or services are to be provided by consultants on a contractual basis, the applicant must indicate the individuals to be hired for specific tasks, or the specific skills that would be needed to perform these tasks and the means of acquiring them. Resumes must be provided and may be submitted as appendices to the application. Applicants must demonstrate that the proposed staff complement have the requisite background and experience to accomplish the major responsibilities outlined in above. Applicants should highlight significant accomplishments of the proposed staff in relation to their respective roles in the project. In addition, the percentage of each staff person's time committed to the project must be clearly indicated in the budget narrative.

2. *Program Goals and Objectives.* A succinct statement of your understanding of the goals and objectives of the program should be included. The application should include a problem statement and a discussion of the potential contribution of this program to the field.

3. *Project Strategy.* Applicants should describe their proposed approach for achieving the goals and objectives of the program. In planning and developing an in-service education and training program, applicants must address, but are not limited to, the following points.

- Rationale for the scope and sequence for teaching word recognition skills;
- Motivational techniques;
- Decoding strategy for teaching phonetically regular and irregular words;
- Learning activities that address unique or innovative instructional practices; and
- Any anticipated adjustments or alterations in the curriculum required by the specific target group.

4. Program Implementation Plan.

Applicants should prepare a plan that outlines the major activities involved in implementing the program, describing

how they will allocate available resources to implement the program, and how the program will be managed.

The plan must include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position.

5. *Time-Task Plan.* Applicants must develop a time-task plan for the 12-month project period, clearly identifying major milestones. This must include designation of organizational responsibility, a schedule for the completion of tasks, and an anticipated cost schedule per month for the entire project period.

6. *Program Budget.* Applicants shall provide a 12-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses.

Selection Criteria:

Those interested in responding to this solicitation should submit proposals (applications) designed in accordance with the application review criteria set forth below:

1. *Conceptualization of the problem.* The applicant must demonstrate a clear understanding of, and competence to deal with, deficiencies in reading skills and the factors that support inability to achieve skill and accuracy in reading. (15 Points)

2. *Statement of objectives.* The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem. (15 Points)

3. *Project design.* The procedures, work plan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement. (30 Points)

4. *Project management.* The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system where logistical activities are handled in the most efficient and economical way. (10 Points)

5. *Organizational capability.* The

applicant organization's ability to successfully conduct the project must be documented in the proposal.

Organizational experience with development and implementation of programs using systematic phonics and direct instruction is highly recommended. Key project staff should have significant experience in the subject area addressed in this announcement. (15 Points)

6. *Budget.* The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken. (15 Points)

Award Period:

The project will be funded for 36 months, and the initial budget period is 12 months.

Award Amount:

The award amount for the initial budget period is up to \$200,000 to fund two separate projects. Based on successful completion of the first budget period, the grant recipients will be eligible for additional noncompeting awards that are anticipated over the program period. Applicants are encouraged to submit cost-competitive proposals.

Due Date:

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. E.D.T., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to F.M. Porpotage II, Training, Dissemination, and Technical Assistance Division, OJJDP, room 707, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 707, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact:

For further information contact Frank Porpotage, Training, Dissemination, and Technical Assistance Division, (202) 307-0598.

Prevention and Education

Pilot Sites for the Juvenile Firesetter/Arson Control and Prevention Program in Local Communities

Purpose

This program is designed to fund sites to test the juvenile firesetter/arson control and prevention model.

Background

Juvenile firesetting and arson is a costly, sometimes deadly, problem that requires a special response from the community. As statistics began to reveal the magnitude of the juvenile arson problem, it became apparent that new approaches to screening and counseling were needed that would apply techniques particularly suited to youth and draw on the resources of multiple disciplines in the community. Although a variety of programs have been developed across the country, careful examination of the juvenile firesetting problem or the programs designed to address the problem are virtually nonexistent.

In recognition of the seriousness of the juvenile firesetting problem, OJJDP, in conjunction with the United States Fire Administration (USFA), sponsored the National Juvenile Firesetter/Arson Control and Prevention Program. The Institute for Social Analysis (ISA) received an award to develop this program.

The two-year program, which began in early 1988, is divided into four incremental stages:

1. Assessing the incidence and dynamics of juvenile firesetting/arson and selected juvenile firesetter programs throughout the United States;

2. Developing a comprehensive approach to controlling juvenile arson, including descriptions of program development, implementation, and operation;

3. Developing training and technical assistance packages to provide local jurisdictions with the necessary information to implement appropriate programs; and

4. Testing and disseminating the training and technical assistance packages.

ISA has been assisted during the development project by the National Juvenile Arson Public/Private Partnership, a group composed of individuals from both the public and private sectors who have special expertise and interest in juvenile arson. ISA has completed stages 1 through 3, and, in the process, has developed several products: An assessment report,

two manuals entitled "Guideline for Implementation" and "Resource Materials," a user's guide, and a trainer's guide.

The "Guideline for Implementation" manual includes the model design. This model has seven components: (1) Program Management; (2) Screening, Evaluating and Developing the Intervention Plan; (3) Intervention Services; (4) Referral Mechanisms; (5) Publicity and Outreach; (6) Monitoring Systems; and (7) Developing Relationships with the Justice System. The components are designed to be flexible, and their exact implementation will differ from jurisdiction to jurisdiction. This modular approach allows jurisdictions to develop or expand a juvenile firesetter program which meets their particular needs using available resources. Jurisdictions may draw on selected components (e.g., referral mechanisms, monitoring systems) to augment an existing juvenile firesetter program or use the information to assist in creating a new program. Each component presents a wide range of approaches which vary according to their impact and the resources required for implementation. Thus the materials allow maximum adaptability for virtually any jurisdiction to develop a juvenile firesetter prevention program tailored to its specific requirements.

The components provide detailed information about each of the areas noted above. Below are brief descriptions of the components:

Program Management. The Program Management component provides information on program structure, staffing, training, and funding. In addition, the component includes planning and coordination strategies, which include establishing interagency links, creating a coordinating council, and conducting a juvenile firesetter prevention workshop. As with all the components, this one discusses the jurisdictional characteristics that should be considered when the jurisdiction is deciding on the best approach to alleviate their juvenile firesetting problem.

Screening, Evaluating, and Developing the Intervention Plan. This component summarizes a wide variety of screening and evaluation procedures used by the fire service, law enforcement, probation and juvenile justice, mental health, and schools. The procedures are described in terms of their function, target population, users, content, benefits, and limitations. Decision grids are provided to help users select the most appropriate methods for their service needs.

Intervention Services. The Intervention Services component provides information on three levels of intervention strategies—primary prevention, early intervention, and core intervention. These strategies are aimed at reducing juvenile involvement in the entire range of unsupervised fireplay and firesetting activities. Each of the strategies has specific intervention objectives and is aimed at a particular target population. A variety of intervention strategies used by various agencies is discussed. For each level of intervention, a decision grid is presented to help program managers select the best intervention options to meet the needs of their target population.

Referral Mechanisms. The Referral Mechanisms component highlights the need for the juvenile firesetter program to link effectively with other agencies. The component describes how the program can identify referral sources and target referral agencies. The component also outlines strategies for establishing links between the program and these agencies.

Publicity and Outreach. This component describes how juvenile firesetter programs can develop a public information and education campaign to raise public awareness about juvenile firesetting and the juvenile firesetting program. Various strategies, including brochures, newspaper, TV, and radio exposure, public service announcements, and speaker bureaus are discussed.

Monitoring Systems. The purpose, content, format, and use of systems for monitoring juvenile firesetter programs are covered in this component. Three types of monitoring systems are summarized—management information systems, evaluation systems, and incident reporting systems. The component describes a wide range of possible monitoring systems from manual, paper-and-pencil systems to computerized systems.

Developing Relationships with the Justice System. The purpose of this component is to provide information that will help programs develop effective relationships with the justice system. The component highlights strategies the juvenile firesetter program can use to establish relationships with the probation departments, law enforcement, the legal and judicial community and correctional institutions. In addition, the component contains detailed information about three specific programs: Rochester, New York; Charlotte, North Carolina; and Portland, Oregon.

Information contained in the components are the building blocks of the Training and Technical Assistance Package which has been developed and tested as part of stage three.

Goal

To test the model program components developed in the National Juvenile Firesetter/Arson Control and Prevention Program in local communities.

Objectives

- To fund four to six sites to test the juvenile firesetter/arson control and prevention model;
- To provide training and technical assistance to the test sites; and
- To provide the four to six sites with the ability to implement the juvenile firesetter/arson model.

Program Strategy

The final phase of the National Juvenile Firesetter/Arson Control and Prevention Program calls for implementing the program model in four to six jurisdictions and evaluating program implementation. OJJDP and USFA are requesting applications from jurisdictions interested in implementing the program.

Sites must demonstrate a need for such a program by documenting the seriousness of the juvenile firesetter problem in their jurisdiction. Such documentation may include incidences of juvenile firesetting or suspected juvenile firesetting, arrest data, property loss data, and fire related injuries and deaths due to fires set by juveniles.

While applicants may have an existing juvenile firesetter prevention program, it should not be comprehensive in nature. Such jurisdictions must demonstrate a need or desire to change or augment that program using the materials and information developed as part of the National Juvenile Firesetter/Arson Control and Prevention Program. Jurisdictions should describe specific areas for improvement, particularly focusing on the seven key program components noted above.

Application Requirements

1. Grantees must allow the National Juvenile Firesetter/Arson Control and Prevention Program Staff to conduct a two to three day training workshop that brings together all key agency personnel. Key agencies include the local fire service, law enforcement, juvenile justice, mental health, schools, probation, child protective service, and other agencies that handle juvenile firesetters.

2. Grantees must demonstrate commitments from all of the key agencies listed above to work with the program as referral agencies to and from the program. An essential aspect of the program is the creation of a multi-agency juvenile firesetter task force to guide program implementation. Commitments from key local agencies are essential to this task.

3. Local grantee staff are expected to work closely with the national evaluator and be willing and able to supply program information to the evaluator.

4. Grantees will be required to provide evidence of their juvenile arson problem.

5. Grantees will most likely be local fire departments but may also be other public or private organizations with close links to the fire service.

The duration of the Pilot Juvenile Firesetter/Arson Control and Prevention Program will be one year, and sites may expect follow-up from the national evaluator as long as one year after the workshop.

Task 1: Preparation (Three Months). The grantee organization will meet with officials from key local agencies to plan for their participation in the workshop. Grantees should consider involving officials from social service agencies, the criminal justice system (including juvenile justice authorities), mental health agencies, and the school system, as well as representatives from leading local fire and casualty insurance companies. If the grantee agency is not a fire department, it should involve officials of the fire department as well.

Task 2: Training Workshop (Two-Three Days). The Training Workshop will bring together the relevant agencies (mentioned above) to develop a comprehensive local juvenile firesetter/arson control and prevention program. The Workshop will be presented by ISA staff, using the materials and procedures of the Juvenile Firesetter/Arson Control and Prevention Program, and assisted by the local grantee.

Task 3: Program Implementation (Nine Months). Following the Training Workshop, grantees will implement a comprehensive juvenile firesetter/arson control and prevention program. The implementation phase will include applying policies and procedures developed during the course of the Training Workshop, and may include additional training for selected individuals in specialized techniques (e.g., screening procedures).

The specific activities and products to be completed by the selected sites during this period are:

Activities

- Develop a plan for implementing the model in each site.
- Implement the model in each site.
- Cooperate with the training and technical assistance provider and the evaluator.
- Develop a dissemination strategy.

Products

- An implementation plan.
- A policy and procedures manual for the project.
- A dissemination plan.

Eligibility Requirements

Any agency that handles juvenile firesetters can respond to this announcement. Such agencies include, but are not limited to, fire service, law enforcement and mental health agencies.

Selection Criteria

Applicants should carefully examine the selection criteria set forth below and respond to each requirement of these criteria in developing their application.

1. The problem to be addressed by the project is clearly stated. (20 Points)

- The applicant demonstrates broad knowledge of the juvenile firesetting/arson problems and surrounding issues and is aware of present practices or programs addressing the problem. (5 Points)

- The applicant presents specific evidence of the problem in their jurisdiction and how juvenile firesetting/arson is currently being addressed. (15 Points)

2. The goal(s) and objectives are clearly defined and relate directly to the problem to be addressed. (20 Points)

- The overall goal(s) for the project are clearly related to the juvenile firesetting and arson problems or issues in that community. (10 Points)

- The objectives are measurable and directly related to the identified problems and issues. (10 points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (30 points)

- The applicant explains in clear terms how model components will be selected and how they will be implemented in their community. Applicants must demonstrate commitments from all key agencies (listed in paragraph 1 of the Application Requirements section) to work with the program as referral agencies to and from the program. (15 Points)

- The applicant provides an implementation plan with a timeline that indicates significant milestones in the project, due dates for products and the

nature of the products to be submitted. (15 points)

4. The project management structure is adequate to successfully conduct the project. The applicant provides a chart depicting management responsibility and lines of authority. (15 points)

5. The applicant demonstrates capability at a level sufficient to conduct the project successfully. Applicant's proposed staff have academic and/or employment credentials and adequate knowledge and experience with juvenile firesetter/arson issues to complete the project successfully. (10 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 Points)

Award Period

The project period will be 12 months.

Award Amount

Up to \$20,000 will be available to fund each of the four to six sites to participate in the program.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Materials developed by ISA for this program ("Volume I: Guidelines for Implementation," "Volume II: Resource Materials," and the "User's Guide") may be obtained by contacting OJJDP (see contact below). Applications for test sites must be mailed or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to Travis A. Cain, Special Emphasis Division, OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Travis A. Cain, Special Emphasis Division, (202) 307-5914.

Community-Based Policing

Incarceration of Minorities

Purpose

The purpose of the initiative is to assist jurisdictions in:

- (1) Identifying the extent and nature of overrepresentation of minorities in the juvenile justice system;
- (2) Developing program strategies and practical guidelines to respond to the problem; and
- (3) Evaluating the effectiveness of these approaches.

Background

In 1988 three amendments designed to address overrepresentation of minority youth in the juvenile justice system were made to the OJJDP Act. The first of these amendments, to section 223(a)(23), requires that OJJDP Formula Grant State Plans submitted to OJJDP "address efforts" to reduce the disproportionate incarceration of minority youth.

The second and third amendments add a required activity to the Special Emphasis Program and authorization for the National Institute for Juvenile Justice and Delinquency Prevention to support research. Section 261 (a)(7) was amended to require OJJDP to establish a program to "reduce the proportion of juveniles detained or confined in secure detention and correctional facilities, jails, and lockups who are members of ethnic and minority groups if such proportion exceeds the proportion such groups represent in the general population."

Under section 223(a)(23), States participating in the OJJDP Formula Grants Program must assess the situation with regard to confinement of minority juveniles in all types of secure facilities. If overrepresentation is found, the State must address the problem in a comprehensive manner employing a variety of strategies, such as:

- Assessing the difference in arrest rates, processing, and handling (including rates and periods of incarceration) between minority and nonminority youth;
- Improving prevention and diversion programs in areas where minority youth reside;
- Providing outreach to community-based organizations serving minority youth; and
- Providing reintegration programs for youth previously removed from the community to reduce recidivism.

OJJDP recognizes the challenge the amendments pose to the States and has designed this program to assist them in meeting the requirements.

Definition. For the purpose of this initiative, "minority populations" are defined as members of the following groups: Asians (e.g., Chinese, Japanese, Vietnamese, Filipino, etc.), Pacific Islanders, Blacks, Hispanics and American Indians. For the purpose of determining overrepresentation of minority youth in secure facilities, the term "general population" refers to youth at risk for confinement in a given jurisdiction.

Review of Research and Experience. In 1987, OJJDP sponsored a study conducted by Drs. Carl Pope and William Feyerherm that included an extensive analysis of issues focusing on the relationship between minority status and involvement in the juvenile justice system. In each of its three phases (literature review, existing program identification and secondary analysis) an attempt was made to determine what factors are important with regard to processing decisions and how potential biases could be eliminated from the juvenile justice system. This research suggests that during certain periods and at certain locations minority youth are at greater risk of entering the juvenile justice system than nonminority youth. Support for this premise is found in both the literature review and secondary data analysis.

The focus of the Pope-Feyerherm study was on the official processing of minority youth and not with preconditions which may encourage behavior that leads minority youth into contact with the juvenile justice system. The project identified, located, and compiled the post 1970 research literature relating minority status to actions of the juvenile justice system. Among the more salient findings were the following:

- Studies finding evidence of selection bias were generally no less sophisticated methodologically than studies finding no such evidence, nor were the data of lesser quality.
- The preponderance of findings from the research literature suggests direct and indirect race effects are present at some stages and not at others.
- Selection bias can occur at any stage of juvenile processing.
- Small differences based on racial status may accumulate and become more pronounced as minority youth are processed further into the juvenile justice system.

Pope made an extensive effort to identify programs and policies that have attempted to deal with the question of equity in the processing of minority youth. The specific question that guided the research was: "Are there specific programs targeted toward minority

youth which attempt to reduce disproportionate representation or ensure that decisions regarding such youth are reached in an equitable manner?" This effort did not reveal any programs specifically targeted at minorities focused on ensuring equity in juvenile processing. (Copies of Pope and Feyerherm's report, "Minorities in the Juvenile Justice System," are available through OJJDP.)

Program Implications. The results of Pope's assessment of research and program information led OJJDP to conclude that the lack of programs, policies and practices focusing on ensuring equitable treatment in the juvenile justice system should be addressed in a comprehensive and systematic fashion.

Pope suggested that such program initiatives would involve assisting local communities and juvenile justice agencies (including police, courts, corrections and ancillary agencies) in understanding the nature of the problem, developing a review and monitoring procedure, and conducting training designed to reduce the potential for disparate treatment.

Goals

- To help jurisdictions identify the extent and nature of overrepresentation of minorities in the juvenile justice system;
- To reduce disproportionate detention and incarceration of minority juveniles in jails, lockups, secure detention and correctional facilities in selected jurisdictions;
- To promote the development of clear, consistent, objective decision-making criteria for juvenile justice agencies;
- To provide alternatives to detention and incarceration of minorities, including prevention and diversion programs, and reintegration programs for youths previously incarcerated; and
- To identify and disseminate information on juvenile justice system policies and practices that are racially and ethnically neutral.

Objectives

- To develop a process for identifying the disproportionate representation of minority youth in the juvenile justice system;
- To develop policies and practices to eliminate processing differentials relating to race and ethnicity;
- To develop a training and technical assistance curriculum to transfer the assessment process; and

- To implement and evaluate programmatic responses in selected sites.

Program Strategy

This program is designed to build upon the current work of the States under the new formula grant requirement that, as part of their State plans submitted to OJJDP for formula grant funds, States "address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population * * * (sec. 223(a)(23) of the JJDP Act).

OJJDP has prepared and disseminated regulations to assist the States in meeting this requirement. States receiving OJJDP formula grant funds are required to conduct a statewide assessment of the juvenile justice system's treatment of minority youth to determine whether minority youth are disproportionately represented. States that identify problems are to employ a variety of strategies to address the problem in a comprehensive manner.

Under this initiative, four States will be selected competitively to receive training, technical and financial assistance under this Special Emphasis Minority Program. The basic criteria for selection are:

(1) The State has conducted an initial assessment and developed a preliminary report indicating that there is a significant problem with disproportionate representation of minorities in secure custody at the local level; and

(2) The State can demonstrate how discretionary funds will be used in conjunction with formula grant funds to develop a comprehensive plan of action.

The four recipient States will be responsible for:

- Identifying jurisdictions in which changes in policies, procedures and practices can be made in processing minority juvenile offenders to reduce their disproportionate incarceration;
- Guiding development and implementation of a program to reduce disproportionate incarceration of minority youth, including (1) training and technical assistance for juvenile justice staff and decision makers, in order to increase their awareness of the problem and establish uniform standards to be used in the processing of juvenile offenders, and (2) selection of programs to serve as alternatives to incarceration for minority youth;

- Developing and managing a systematic monitoring procedure for ensuring that uniform standards are adhered to; and

- Implementing an evaluation of the effort.

States participating in this initiative will be required to work with the technical assistance provider who will assist States in carrying out a more in-depth assessment of the nature of the problem and how to address it. The technical assistance provider will be responsible for establishing an advisory committee that must be approved by OJJDP, and assisting the States, through technical assistance and training, with the assessment and analysis of the problems related to the disproportionate incarceration of minorities.

Implementation of the initiative will be accomplished in two phases. During Phase I, four pilot sites and a training and technical assistance provider will plan and develop the pilot program. The technical assistance provider will assist the sites in developing model approaches to conduct crime and system flow analyses to assess overrepresentation of minority juveniles in secure facilities and to determine whether the system handles minority juveniles differently based on race. The technical assistance provider will then assist the sites in developing a systematic monitoring procedure to determine the percent of minority/nonminority youth in each stage of the juvenile justice system at regular intervals.

The model approaches to assess disproportionate representation of minority juveniles in the juvenile justice system developed during Phase I will be disseminated to other States participating in the Formula Grants program.

During Phase II, the pilot sites will develop and implement program models and strategies to eliminate disproportionate incarceration of minority youth and to evaluate these program models through evaluation. The technical assistance provider will assist States in implementing their programs as well as develop operational manuals based upon Phase II experiences of the pilot sites. This information will become part of the training and technical assistance package to be marketed and disseminated to other interested State and local agencies.

Phase I—Planning and Pilot Program Development

During Phase I, each State will undertake a two-stage process to accomplish the goals and objectives of this phase. States will be assisted by the

technical assistance provider in the form of intensive training and technical assistance to enable them to meet the goals and objectives of this initiative.

Stage 1—Problem Assessment

The States' preliminary assessment should be based on a statewide comparison of juvenile justice system processing of nonminority and minority youth and will serve as justification for Federal assistance. Successful applicants will then undertake a more in-depth analysis, and where necessary, collect additional data on the treatment of minority youth to identify points in the system accounting for disproportionate incarceration. This information will provide the basis for identifying local jurisdictions that should be targeted for changes in practices, policies, and procedures, and for devising program alternatives.

(State Site Responsibilities)

Activities: Major assessment activities should include:

1. Developing and carrying out a plan to collect data regarding local juvenile justice treatment of minority and nonminority youth. Data should include those items identified in the OJJDP *Minority Confinement Instruction* issued in November 1989; and should be defined to ensure consistency across sites.

2. Developing and carrying out a plan for analyzing data, comparing juvenile justice system treatment of minority and nonminority youth at the local level with statewide and national data; and

3. Reporting on disproportionate incarceration of minority youth in the State which identifies target intervention areas.

Products: Products to be completed in this stage are:

1. A plan for collection and analysis of data on the treatment of minority and nonminority youth by the local jurisdiction; and

2. A report on disproportionate incarceration of minority youth at the local level.

(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage are:

1. Preparing a plan to develop and refine model approaches for collection and analysis of data to identify differences in juvenile justice system treatment of minority and nonminority youth; developing related data collection policies and procedures and implementing the pilot;

2. Developing model approaches and related policies and procedures to address the problem identified;

3. Establishing an advisory committee and obtaining their participation and review of program activities and products; and

4. Developing and carrying out a dissemination strategy.

Products: Products to be completed in this stage are:

1. A plan for model assessment development and pilot activity, specifying in detail the approach and activities to be undertaken for each step, and the projected monthly costs;

2. Draft and final model assessment design, and related policies manual; and

3. Dissemination strategy to inform the field of the development of the program, products, and results of this stage.

Stage 2—Development of a Response to Reduce the Disproportionate Incarceration of Minorities.

Based on the results of stage 1, States will develop a program designed to reduce disproportionate incarceration of minorities in jurisdictions where it has been documented. Successful development of such a program will require careful planning. This planning effort will be managed by the recipient agency, with advice from the State Advisory Group (SAG), and will be supported by the technical assistance provider funded separately by OJJDP and/or obtained locally. The planning process should involve key public and private sector decision makers within the targeted jurisdictions who have the authority, responsibility, and resources to implement juvenile justice related policies and programs, including redeployment of existing resources.

The program development and implementation of this process requires a coordinator familiar with the existing juvenile justice system. The coordinator must be able to:

- Interpret data and use it in formulating policies and programs;
- Identify and assist key decision makers and to define and solve problems;
- Identify public and private resources that could be redirected to address disproportionate representation of minorities in the juvenile justice system; and
- Work effectively with the State Advisory Group to accomplish the preceding tasks.

(State Site Responsibilities)

Activities: The major activities of this stage are:

1. Defining the system components. Determine the components and personnel of the juvenile justice system responsible for initiating corrective actions and who have the authority to improve the services and information systems.

2. Identifying the decision making policies, procedures, practices, programs, and resources that should be revised, and assessing the need for additional policy, procedures, practices, programs and resources.

3. Developing a program strategy. Identify modifications to existing policies, procedures, practices, and services required to reduce the potential for discriminatory decision making contributing to disproportionate representation of minorities in secure facilities. Possible program strategies for reducing disproportionate confinement may include:

- *Developing a periodic, systematic monitoring procedure* to determine rates of minority/nonminority youth in each stage of the juvenile justice system. The research literature suggests that this disproportionateness may be evident at some stage but not at another. Therefore, it is important to target those decision points at which major disparities occur and monitor accordingly;

- *Supporting training and education* for juvenile justice practitioners, elected officials, the general public and at-risk population regarding issues related to disproportionate representation of minority youth in secure facilities, as well as the need for policy changes and program resources to address this situation;

- *Increasing the availability and improving the quality of diversion programs* for minorities who come in contact with the juvenile justice system, such as police diversion programs, youth service bureaus, community intake centers, and community arbitration and mediation programs;

- *Providing support for prevention programs* in communities with a high percentage of minority residents with emphasis on support for community-based organizations serving minority youth;

- *Increasing the availability of effective and credible community-based alternatives* for minority youth involved in the juvenile justice system; and

- *Providing support for aftercare programs* to facilitate reintegration of minority youth previously confined in State and county facilities into their home communities.

4. Developing an implementation plan. Prepare an implementation plan that defines the objectives, tasks, and resources required for each component.

The plan should specify responsible parties and be designed to ensure accountability.

5. Developing a program evaluation plan. OJJDP expects that selected States will fund an independent evaluation of this effort. Accordingly, each State should develop a Request for Proposals (RFP) for an independent evaluation of program implementation and impact on juvenile justice system processing of minority youth during Phase II. OJJDP funds may be used in part to support this evaluation.

Products: The major products of this stage are:

1. An implementation plan that includes the following:

- Documentation of the nature and extent of the problem and need for intervention based on the results of the in-depth analysis;

- Establishment of uniform policies, procedures, and practices in juvenile justice system processing of minority juvenile offenders that prevent discriminatory practices;

- Specification of changes to address the problem, e.g., programs that will be undertaken, such as those identified under recommended activities of Stage 2, Phase I;

- A timetable for accomplishing all aspects of the implementation plan;

- An explanation of how new or revised uniform policies, procedures, practices, and alternative programs will decrease disproportionate incarceration of minority youth; and

- Identification of specific data required to monitor implementation.

2. Documentation of how the implementation plan complements the statewide plan for addressing disproportionate incarceration of minority youth.

3. An RFP for the program evaluation.

4. A supplemental application.

When the four selected sites become operational, the technical assistance provider will provide intensive training and technical assistance to enhance their success. The technical assistance provider will continue to work with the States to develop policies, practices, and programs that respond to problems identified as a result of the statewide assessment of overrepresentation of minority youth in secure facilities; develop a marketing and dissemination strategy; and present the program and evaluation results to policy makers and practitioners at the State and local levels. Finally, the technical assistance provider will work cooperatively with an independent evaluator to ensure the integrity of data collection and feedback.

(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage are:

1. Provision of intensive training and technical assistance to the pilot sites in developing policies, practices, and model programs;
2. Establishment of uniform data collection items for monitoring system decisions;
3. Provision of guidance and technical assistance to sites in developing evaluation designs and/or requests for proposals to conduct an evaluation; and
4. Development of a marketing and dissemination strategy.

Products: The products to be completed during this stage are:

1. A plan for providing training and technical assistance to pilot sites; and
2. A marketing and dissemination strategy to inform the field of the products and results of this stage.

Phase II—Pilot Implementation, Evaluation and Dissemination

It is anticipated that supplemental funding for the second 18-month budget period will cover implementation and, in part, an independent evaluation and activities related to facilitating and monitoring the programs in the pilot sites, including training and technical assistance. The relevant State agency is encouraged to provide monetary support to local sites for implementation and evaluation.

Stage 1—Pilot Implementation**(State Site Responsibilities)**

Activities: The major activities of this stage are:

1. Implementing uniform policies, procedures and practices;
2. Implementing program alternatives;
3. Implementing program monitoring and assessment; and
4. Implementing uniform data collection protocols to monitor change in system decisions.

Products: The major products of this stage are:

1. Quarterly progress and financial reports;
2. An interim program implementation report with plan modification as needed;
3. A final evaluation design and data collection protocols; and
4. A final monitoring and assessment report.

(Technical Assistance Provider Responsibilities)

The technical assistance provider will provide technical assistance to the sites on all aspects of the implementation during the Phase I activities.

Stage 2—Development of Descriptive Program Operation Manuals

Beginning with the 30th month of this project period, the technical assistance provider will work cooperatively with the pilot sites to develop descriptive program operation manuals for use in other States. The purpose of the manuals is to provide guidance to other Formula Grant States regarding: The assessment and analysis process; and the development and implementation of policies, practices and programs affecting the disproportionate incarceration of minority youth.

The operational manuals will be completed in three incremental stages. The first section of the document will contain policies and procedures relating to the assessment and analysis process. This should be completed by the end of Phase I, Stage 1. The second section of the document will include the planning process for developing policies, procedures and program models. This should be completed at the end of Phase I, Stage 2. Section three will include a description of the models that were implemented to address the issue of disproportionate representation of minority youth in secure facilities. It should be completed by the end of Phase II. This information will become part of the training and technical assistance packages for broad dissemination to interested State and local agencies.

Concurrent with the development of program operation manuals, the technical assistance provider will develop a plan for providing training and technical assistance to other States.

(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage for the technical assistance provider are:

1. Preparation of a plan for developing the operations manuals;
2. Development of the operations manuals;
3. Participation and review by the advisory committee; and
4. Development of a dissemination strategy.

Products: The products to be completed in this stage are:

1. Plan for operations manual development;
2. Draft and final operations manual design(s); and
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development Activities

Upon completion of activities through the development of the operations manuals, the technical assistance provider will prepare a plan for developing the training and technical assistance packages. Based on the plan, the technical assistance provider will transfer the program operation manuals and related materials into a comprehensive training and technical assistance package.

Comprehensive training manuals detailing the program design and operation must be developed to encourage and facilitate implementation of promising programs in the final stage of the demonstration phase.

The training manual should be the focal point of the training and technical assistance package. Its major users will be State, county, and local policy-makers and practitioners involved in resource allocation and program development related to supervision of youth and the issue of minority overrepresentation. The manual should be designed for presentation in formal training sessions and for independent use by jurisdictions that do not participate in such sessions. Each manual should include a complete description of promising programs and incorporate related policies and procedures. The manual should provide instructions and supplementary materials for trainers to facilitate presentation, and to assure understanding and successful adaptation and implementation of promising programs.

The training curriculum will be tested by the technical assistance provider.

(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage are:

1. Preparation of a plan for developing the training and technical assistance package;
2. Development of the training and technical assistance materials;
3. Recruitment and preparation of training and technical assistance personnel;
4. Testing of the training curriculum package;
5. Participation and review by the advisory committee; and
6. Development of a dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Products: The products to be completed during this stage are:

1. Plan for the development of the training and technical assistance package;

2. Draft and final training and technical assistance package including the training manual and information materials; and

3. Dissemination strategy.

Eligibility Requirements for the Technical Assistance and Training Provider: Applications are invited from public and private organizations. Private for-profit organizations must waive their fee in order to be eligible. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Applicants and co-applicants must demonstrate prior experience in the design, conduct and implementation of research and development programs; juvenile justice research and evaluation; training and technical assistance development and delivery; program and policy development; and experience with and knowledge of minority youth involvement in the juvenile justice system.

Eligibility Requirements for the State Sites: Applications are invited from State agencies having responsibility for implementing the JJDP Act and that: (1) Have conducted an initial assessment and developed a preliminary report indicating that there is a significant problem with disproportionate representation of minorities in secure custody at the local level; and

(2) Can demonstrate how discretionary funds will be used in conjunction with formula grant funds to develop a total plan of action.

General Application Requirements: Applicants must submit a completed application (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. Applications must include the information outlined in this section of the solicitation in Part IV, Program Narrative, of the application form.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and supervise and coordinate the activities of the other co-applicant.

Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Specific Application Requirements:

1. **Problem Statement.** A clear, concise, well-justified statement of the problem, and evidence of knowledge of relevant data. The applicant demonstrates a sensitivity to the need to apply data analysis to problem-solving to advance policies, practices and procedures.

- In addition, State sites must include an analysis of their State-level data on juvenile justice system handling of minority and nonminority youth, resulting in preliminary conclusions with respect to jurisdictions and decision points in the juvenile justice system accounting for the disproportionate incarceration of minority youth.

2. **Program Goals and Objectives.** A succinct statement evidencing an understanding of the goals and objectives of the program.

3. **Program Strategy.** Applicants should describe the proposed approach for achieving the goals and objectives in relation to the activities and products of this program.

- **Program Implementation Plan—** Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

- **Time-Task Plan—** Applicants must develop a time-task plan for the project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products.

- **Products—** Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness of each product to the field.

4. **Project Management Structure.** The applicant must include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the minority confinement program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also

provide recommendations for program advisory committee members. This documentation and individual resumes may be submitted as appendices to the application.

5. Organization Capability.

Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative.

6. **Program Budget.** Applicants must provide an eighteen-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants must also include a well-justified budget estimate to cover costs for an additional 18-month program period. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget must include funds to support the activities of the project advisory committee and working group.

Selection Criteria:

In general, all applications received will be reviewed in terms of their responsiveness to this solicitation and the specific program application requirements set forth in this announcement. Specifically, applications will be rated according to the following criteria and point values (weights):

1. The problem to be addressed by the project is clearly stated. (20 Points)

- This criterion includes a clear, concise, well justified statement of the problem, and evidence of knowledge of relevant data. The applicant demonstrates a sensitivity to the need to apply data analysis to problem-solving to advance policies, practices and procedures.

- State applicants are expected to include an analysis of their State-level data on juvenile justice system handling of minority and nonminority youth, resulting in preliminary conclusions with respect to jurisdictions and decision points in the juvenile justice system accounting for the disproportionate incarceration of minority youth.

2. The objectives are clearly defined and relate directly to the problem to be studied. (20 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (25 Points)

- This criterion includes appropriateness and technical adequacy of the approach to the activities and products of each stage of the program

for meeting the goals and objectives; and potential utility of proposed products;

- Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products and the nature of the products to be submitted.

4. The project management structure is adequate to successfully conduct the project. (15 Points)

5. Applicant's capability is demonstrated at a level sufficient to conduct the project successfully. Applicant's academic and/or employment credentials provide adequate knowledge and experience of juvenile justice issues to complete the project successfully. (10 Points)

- The technical assistance provider must demonstrate the extent and quality of organizational experience in juvenile justice system research and evaluation; implementation of research and development programs; training and technical assistance development and delivery; and knowledge of minority youth involvement in the juvenile justice system.

6. Budgeted costs are reasonable, allowable and cost effective for the proposed activities. (10 Points)

- This criterion includes completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Award Period and Amount

The Special Emphasis Minority Program is a three-year program. Applicants are advised that the initial awards will provide support for Phase I activities. For this program, OJJDP has allocated a total of \$600,000 for an initial 18-month project period. Up to \$600,000 will be made available for the continuation of the project for the second 18-month period. The funding is broken down as follows:

(Funding for The Technical Assistance Provider)

Up to \$200,000 will be awarded to the successful applicant to provide training and technical assistance to the pilot sites.

(Funding for the State Sites)

Up to \$100,000 will be provided to each of four States to assess and implement program approaches to reduce overrepresentation in the juvenile justice system. It is anticipated that supplemental cooperative agreements will be awarded for a second 18-month budget period for both

the training and technical assistance provider and individual site projects.

OJJDP funds will be used to support the following activities: Training and technical assistance; program staff time and costs related to program planning, meetings with the State-level advisory group; and national meetings convened by OJJDP focused on the overall OJJDP program. During the second funding period, funds may also be used in part to support program evaluation (not more than 20% may be used for this purpose).

States shall provide necessary funds to support: needed programs to serve as alternatives to incarceration for minority youth; monitoring of the implementation of uniform standards; and a program evaluation.

Applicants must demonstrate the management and financial capability to effectively implement a project of this size and scope.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to Deborah Wysinger, State Relations and Assistance Division, OJJDP, room 742, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to room 760, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Deborah Wysinger, State Relations and Assistance Division, (202) 307-5924.

Training in Cultural Differences for Law Enforcement/Juvenile Justice Officials

Purpose

The purpose of this program is to provide training in cultural and ethnic differences for law enforcement and other juvenile justice personnel.

Background

OJJDP determined that a training program is needed in the area of cultural and ethnic differences for personnel in all components of the juvenile justice

system. Such training would help to prevent disparate treatment of minority youth by the juvenile justice system as well as enhance the safety of juvenile justice personnel working in minority communities. The importance of training justice agency staff regarding racial, cultural, and ethnic differences is recognized outside OJP/OJJDP. Such training has been specifically recommended by the National Council of Juvenile and Family Court Judges (*Juvenile Court Journal*, 1990/Vol. 41 No. 3A).

It should also be recognized that cultural differences, biases and sensitivity vis-a-vis justice system handling of minority populations have been addressed before. However, prior training approaches in cultural and ethnic differences have not been uniformly successful. For example, a 1972 evaluation report on race and cultural relations training for the Albuquerque Police Department suggested that the initially strong impact of the training dissipated quickly (Koehue and Wilson, 1972). Training in this area has also differed in quality, scope, format and depth. Moreover, various definitions of training have been employed to deal with cultural/ethnic differences, including, but not limited to, race relations, human relations, police-community relations, sensitivity, and encounter group training. The effectiveness or relevance of such training may depend on the nature or guiding philosophy of the particular organization in which justice system personnel operate (see Woolpert, 1980, for a comparison of the classical military model of police organizations with a more democratized "humanistic" model). Clearly, there are both psychological and sociological dimensions to the handling of cultural/ethnic differences, which must be recognized in the training content and process.

In a psychological vein, it is important for police and other agency officials to be willing to recognize cultural differences in contacts with system clients, and avoid engaging in "crossed transactions" (Berne, 1964). For example, an overly authoritarian stance interferes with the sensitivity and awareness required to perceive cultural or ethnic dissonance in communication or interaction with minority group members. Often those who need training in this area are the least likely to recognize such a need.

At a sociological level, it is important for agency staff to understand that acceptable or normal behavior in one culture may be misunderstood and

viewed as deviant in another. For example, "coin rubbing" practiced in Vietnamese folk-medicine (Sue, 1981), which leaves marks on the body, may be misinterpreted as abuse. The training inventory and subsequent curriculum should capture those elements which are generic to the area of cultural/ethnic differences. Culture conflict *vis-a-vis* the majority culture is a problem requiring agency recognition among most, or all, minority group young people, regardless of specific background.

At the same time, particular cultural idiosyncracies of individual cultural/ethnic groups that may create misunderstanding or dissonance will also be addressed. Spoken language, body language, values, and conception of time are but a few of the culture related elements that vary between groups (Quintanilla, 1983). Furthermore, the training inventory must identify the cultural/ethnic populations that present the most significant interpersonal problems to juvenile justice system professionals along the dimensions of cultural/ethnic differences. While Blacks, American Indians, Hispanics, and Asians are the minorities perhaps most often recognized, there are many subgroups (subcultures) among these populations. It should also be recognized that immigration to the United States is an ongoing process, and recent, or new entrants may present different problems than current minority populations.

Further, it will be important to establish the appropriate format for training in the cultural/ethnic area. How much training, and in what settings, is appropriate? Quite extensive training is probably necessary at the entry, or pre-service level. For experienced personnel, one or two modules, added to other training in the course of workshops and conferences, may be all that is normally needed. Last, the training curriculum must be implemented, tested, and revised, if indicated, in order to assure its optimum effectiveness.

Goals

- To improve the effectiveness of law enforcement and other juvenile justice agency staff interactions with minority group suspects and offenders; and
- To improve the policies, procedures and practices regarding governing the behaviors of law enforcement officers, juvenile court and juvenile corrections personnel in the handling of minority youth suspects and offenders.

Objectives

- To determine training needs and existing training resources in the areas of cultural and ethnic differences, based upon an inventory of existing cultural/

ethnic training programs and an assessment of information regarding the handling of minority group youth suspects and offenders by juvenile justice system personnel.

- To develop a training curriculum with discrete modules that responds to the unique characteristics and problems in the major components of the juvenile justice system, i.e., law enforcement, juvenile court, and juvenile corrections, for implementation in conjunction with existing OJJDP funded training programs. The development of this program will include curriculum design and testing the curriculum modules with the intended audiences; and

- To develop a range of training materials for each module of the curriculum which will be disseminated when the training program is implemented.

Program Strategy

The program will include three phases:

1. Phase I will consist of an inventory of training needs and available programs.

It is expected that a first step in the process will be the review of literature, including training materials, in the subject area. In particular, the review should cover any evaluations of prior training on cultural and ethnic issues. Contacts with a reasonably full range of juvenile justice system agencies should be made to determine current training needs. The scope of the agency survey will be dictated by resources available for this project. It will be important to select and query those officials of agencies expected to yield the maximum amount of information. Ideally, the contacted agencies should have experience with diverse minority group populations. (It will be necessary for the staff of this project to consult with OJJDP training program managers in order to identify existing curriculum materials.) The agency contacts and subsequent discussions will result in the identification of the various cultural issues and difficulties exemplified by different minority groups and subgroups. This is a key objective of the inventory. The gathered information will determine the content of training required by police and other agency personnel. Conceivably, there may be some differences between training needs of law enforcement, probation staff and correctional institution personnel. To confirm the training needs, the project staff may find it necessary to consult with minority group members involved with the juvenile justice system, or with organizations representing minority populations.

The inventory process will culminate in a report summarizing the state-of-the-art of training (including the availability of programs) dealing with cultural/ethnic differences. The report will outline current training needs on this topic in the juvenile justice system; set forth recommendations with respect to further training curriculum development; and specify an implementation plan consistent with the results of the inventory. This report must indicate the amount of training appropriate to address different culture/ethnicity related topics. For example, the report should suggest how much training is needed in such an area as cultural values, and what emphasis must be given to language training. The report must also indicate what portion of required training is readily available, and state what training curricula, if any, remain to be developed. Some assessment of the availability of qualified trainers, and of programs for the development of such trainers, must be included in the inventory as well.

2. Consistent with the results of the inventory, a training curriculum on racial, ethnic and cultural differences will be developed during Phase II of the project.

The inventory may indicate that an effective curriculum could incorporate existing training programs or materials which require little or no modification to fit juvenile justice needs. In such a case, the project will describe the training and provide information regarding accessing the program(s) for juvenile justice use.

It is equally likely that existing training materials, while in part appropriate for juvenile justice purposes, may require extensive refinements or adjustments to meet the needs identified by the inventory. The project would make the adjustments as appropriate. Furthermore, should development of new materials be required, the project will be expected to carry out this task in order to meet the juvenile justice system's training requirements.

In any event, the project funded in response to this program announcement will be expected to compile, develop, or make available, training programs in the subject area for juvenile justice use. The materials should provide both trainee and trainer guides and should be structured in a modular format, including audio-visual and other reference materials. The modules will be of appropriate length and content to be utilized in various training settings, such as juvenile justice conferences, seminars and workshops. The training package(s) must also be prefaced with appropriate

rationale (consistent with the inventory results) for the content and process of the training. The preface to training materials should indicate the proper audiences for the content and the duration of particular training segments.

While training content needs will have been identified through the inventory, the actual compilation, structuring, or preparation of new training materials will occur during the curriculum development phase of the project. It is particularly important to match the content of training segments with the timeframe for their implementation. Since different agencies are able to make personnel available for training at different times and for different lengths of time, the curriculum package(s) should provide flexibility along the time dimension. For example, a Michigan Department of Corrections Jailer Specialist Training Program design included five different training time arrangements to accommodate the needs of jails and lockups around the State (Walters, 1973).

3. The curriculum will be tested, implemented, and disseminated during Phase III of the project.

It is envisioned that the first 12 months of the project period will be devoted to the inventory and curriculum compilation/development. The second project year will consist of curriculum testing, implementation, and dissemination. Respondents to this announcement should describe and justify their anticipated testing and implementation procedures. The extent of required testing will depend somewhat on the nature of the curriculum. Some existing training materials may have already been tested in implementation settings similar to those envisioned under this announcement; newly developed materials will not have been tested. The completed curriculum should be reviewed by experts in the subject area (outside the project). Such experts should also be engaged to observe and critique initial implementation of the training. Respondents to this announcement must provide for an Advisory Board in the project to be assigned responsibility for the above and related functions. It is also expected that the project will utilize participant evaluations of the training during the testing stage.

It is expected that the staff of this project will initially consult with OJJDP training program managers (also with training grantees or contractors) in order to incorporate, as appropriate, existing curricula employed in OJJDP supported programs. The Office funds a number of programs for police, court, corrections

and related juvenile justice agency personnel. Since consultation between the project's and OJJDP staff will have taken place through the inventory and curriculum development phases of this project, the training, testing, and implementation phases should proceed smoothly.

The last project activity involves making the training curriculum available to the wider field of juvenile justice practitioners throughout the country. One obvious vehicle for accomplishing this is the Juvenile Justice Clearinghouse. Availability of the curriculum can also be made known to practitioners through the various professional juvenile justice organizations. It is envisioned that the training program will be implemented (in accordance with its modular format) during national or regional events of the professional organizations in the field. The curriculum should also be designed for in-house training by individual juvenile justice agencies. For example, police and other agencies could incorporate parts of the curriculum in academy, or other mandated training, for entry level and in-service personnel. As part of this last phase of the project, a dissemination plan must be developed. It should include cost considerations.

Products: The major products are:

1. An inventory of existing training programs on cultural/ethnic differences used with criminal and juvenile justice agencies.
2. A summary of juvenile justice system practices/policies and procedures which need to be addressed in correcting disparate and insensitive handling of minority youth.
3. A training curriculum with discrete modules suitable for use as "stand-alone" units in training programs for law enforcement officers, juvenile court personnel, and juvenile corrections personnel.
4. A dissemination strategy for expanding use of the curriculum beyond OJJDP funded training programs.
5. An implementation plan and schedule for the initial training.
6. Quarterly progress reports.

Eligibility Requirements

Applications are invited from public and private organizations. Private for-profit organizations must waive their fee to be eligible.

Selection Criteria

Those interested in responding to this solicitation should submit proposals (applications) designed in accordance with the application review criteria set forth below:

1. *Conceptualization of the problem.* The applicant must demonstrate a clear understanding of, and competence to deal with, the multilateral area of cultural and ethnic differences, and the training requirements in this field. (20 Points)

2. *Statement of objectives.* The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem. (20 Points)

3. *Project design.* The procedures, work plan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement. (20 Points)

4. *Project management.* The project's management structure and staffing must be adequate for the successful implementation and completion of the project. Staff résumés should be attached to the application. Key project staff should have significant experience in the subject area addressed in this announcement. (15 Points)

5. *Organizational capability.* The applicant organization's ability to successfully conduct the project must be documented in the proposal. Organizational experience with development and implementation of multicultural training programs should be indicated. (15 Points)

6. *Budget.* The proposed budget must be reasonable, allowable and cost-effective *vis-a-vis* the activities to be undertaken. (10 Points)

Award Period

The project period is 24 months. The initial budget period is for 12 months.

Award Amount

The award for the initial 12-month period will be up to \$125,000.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the *Federal Register*. Those applications sent by mail should be addressed to Peter Freivalds, Training, Dissemination, and Technical

Assistance Division, OJJDP, room 712, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 712, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Peter Freivalds, Training, Dissemination, and Technical Assistance Division, (202) 307-5940.

Crosscutting Initiatives

Summer Research Fellowship Program

Purpose

The purpose of this program is to provide an opportunity for individuals to analyze existing research data and to produce useful information on juvenile justice and delinquency prevention in current OJP program priority areas.

Background

The Summer Research Fellowship (SRF) Program has been established within the National Institute for Juvenile Justice and Delinquency Prevention (NIJDP) at OJJDP.

OJJDP encourages and coordinates research and welcomes proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below. Examples of specific topics of importance are included.

- *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

- Restitution.
- Mediation.
- Intensive surveillance systems, including electronic monitoring.
- Intervention and treatment of juvenile sex offenders.
- Delay of treatment and sanctions.
- Improved classification of offenders.

- *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

- Intervention in chronic juvenile offender activity.
- Treatment of violent offenders.

- *Evaluation.* Evaluate research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

- Evaluation of sanctions.

- Evaluation of the impact on drug use by participants in programs which use a decision-making process.

- *Prevention and Education.*

Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

- Drug education to prevent use and other involvement.
- Literacy training and reduction of illiteracy.
- Chronic juvenile offenders.
- Family strengthening.
- Media violence.
- Reduction of truancy and dropouts.
- Detection of child abusers.
- Peer pressure on delinquency and drug use.

- *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

- Safe and drug-free neighborhoods.
- Innovative care resources for juveniles under the supervision of the court.
- Aftercare and transitional living for juveniles under supervision.
- Creation of healthy peer relations.
- One to one adult-juvenile support.
- Prevention of gang violence.

- *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.

- Treatment of abused and/or exploited children.
- Prevention of child exploitation.

- *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.

- Development of innovative, effective information systems for juvenile justice agency operation.

OJJDP and other Federal agencies have funded numerous projects that have contributed significantly to our understanding of juvenile delinquency and its prevention, and of the operations of the juvenile justice system. Many of these projects have resulted in extensive data that have not been fully analyzed. OJJDP's interest in these data does not end with the achievement of the project's original objectives. Reexamination of such data can yield innovative insights. Moreover, secondary analysis can corroborate

other findings. A meta-analysis of various research products can reveal new perspectives and produce new, useful information for policy guidance.

Goal

To provide useful information to guide and enhance juvenile justice and delinquency prevention through short-term studies in the areas noted above.

Objectives

- To conduct additional analysis of statistical and research data in the field of juvenile justice and delinquency prevention;
- To conduct a meta-analysis of existing research data, particularly of research data and data sets resulting from OJJDP-sponsored research;
- To promote the use of research data and data sets which can provide critically needed information on important juvenile justice issues; and
- To prepare special analyses and disseminate the results of such work.

Program Strategy

Proposals are solicited from researchers who are interested in performing further analysis or a meta-analysis of existing research data and findings in the OJP priority areas. While this program is intended primarily for senior researchers and relatively new Ph.D.'s, it is not limited to them. Although project problem identification and data selection are the choice of the applicants, proposals to examine juvenile justice and delinquency prevention research data and data sets generated under the auspices of OJJDP or other Federal agencies are of particular interest to OJJDP. These are available through the National Juvenile Court Data Archive, the Interuniversity Consortium for Political and Social Research at the University of Michigan or the National Institute of Justice Data Resource Program.

Studies based on other research data will also be considered for funding. Applicants should make a special effort to describe in detail the research data for the proposed analyses and their relevance to the goals of OJJDP.

Eligibility Requirements

Applications will be accepted from researchers who have achieved doctorates, but it is not limited to them.

Applicants should submit an application (Standard Form 424) along with the following information:

A. A proposal not to exceed 10 double-spaced pages which should include:

(1) The policy or research question to be addressed;

(2) The problem(s) to be investigated;

(3) Any data set(s) to be employed;

(4) The procedure and analytical methodology, including a description of how planned analyses replicate or build on results obtained by others using some information;

(5) The potential policy implications; and

(6) The expected products of the research.

B. A detailed one-page budget for salaries, supplies, computing costs, and other expenses, not to exceed \$10,000. Applicants should include the cost of one trip to present the results of this research at an appropriate professional society meeting, such as the annual meeting of the American Society of Criminology or at a colloquium at the OJJDP offices. This program is designed as summer support for individuals; the inclusion of general institutional and indirect costs is not acceptable.

C. The SRF applicants must submit two letters of recommendation from individuals who are familiar with work and qualifications for this fellowship (with one recommendation from the supervisor or dean indicating an evaluation of the proposed topic and the potential of the applicant).

D. Resumes, also required for key fellowship program personnel, should include background, academic work, professional experience and publications.

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the project is clearly stated. (30 Points)

- Problem to be addressed is based upon issues that are significantly related to juvenile justice and delinquency prevention in the OJP priority areas. (15 Points)

- The applicant demonstrates broad knowledge of the problem and surrounding issues and is aware of present practices or programs addressing the problem. (15 Points)

2. The objectives are clearly defined and relate directly to the problem to be studied. (20 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products and the nature of the products to be submitted. (25 Points)

4. The project management structure is adequate to conduct the project successfully. (5 Points)

5. Applicant's capability is demonstrated at a level sufficient to conduct the project successfully. Applicant's academic and/or employment credentials provide adequate knowledge and experience of juvenile justice issues to complete the project successfully. (15 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 Points)

Award Period

The project period will be up to five months. Extensions for the Summer Research Fellowships are as follows:

- Time extensions may be granted for completion and the delivery of the final report, but no further funds will be awarded.

- These time extensions must be requested before the expiration of the original grant and require a report of reasonable progress toward the objectives identified in the original application.

Award Amount

Funds for each fellowship will be subject to negotiation. Three awards will be available for up to \$10,000 each.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the *Federal Register*. Those applications sent by mail should be addressed to Summer Research Fellowship Program, Research and Program Development Division, OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Donni LeBoeuf, Research and Program Development Division, (202) 307-0586. Applicants who anticipate accessing the National Juvenile Court Data Archives

at the National Center for Juvenile Justice (NCJJ) in Pittsburgh, Pennsylvania, should contact Howard Snyder at NCJJ (412) 227-6950, regarding the availability of appropriate data.

Graduate Research Fellowship Program

Purpose

The purpose of this program is to encourage scholars to undertake research in juvenile justice and delinquency prevention in the current OJP program priority areas.

Background

The Graduate Research Fellowship Program has been established within the National Institute for Juvenile Justice and Delinquency Prevention (NIJ/JDP) at OJJDP to solicit proposals from doctoral students entering the dissertation stage of their graduate program.

OJJDP encourages and coordinates research and welcomes proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below. Examples of specific topics of importance are included.

- *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

- Restitution.
- Mediation.
- Intensive surveillance systems, including electronic monitoring.
- Intervention and treatment of juvenile sex offenders.
- Delay of treatment and sanctions.
- Improved classification of offenders.

- *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

- Intervention in chronic juvenile offender activity.
- Treatment of violent offenders.

- *Evaluation.* Evaluative research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

- Evaluation of sanctions.
- Evaluation of the impact on drug use by participants in programs which use a decision-making process.

- *Prevention and Education.* Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

- Drug education to prevent use and other involvement.
- Literacy training and reduction of illiteracy.
- Chronic juvenile offenders.
- Family strengthening.
- Media violence.
- Reduction of truancy and dropouts.
- Detection of child abusers.
- Peer pressure on delinquency and drug use.

• *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

- Safe and drug-free neighborhoods.
- Innovative care resources for juveniles under the supervision of the court.
- Aftercare and transitional living for juveniles under supervision.
- Creation of healthy peer relations.
- One to one adult-juvenile support.
- Prevention of gang violence.

• *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.

- Treatment of abused and/or exploited children.
- Prevention of child exploitation.

• *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.

- Development of innovative, effective information systems for juvenile justice agency operation.

This program supports doctoral students at the dissertation stage of their academic careers. Through their sponsoring universities, doctoral students are awarded grants up to \$12,000 to support the completion of their dissertations. Dissertations resulting from this program should contribute to juvenile justice policy, delinquency prevention, analyses of pertinent data, or the advancement of knowledge concerning important juvenile justice issues. (See above priorities.)

Goal

To add to the knowledge of juvenile justice and delinquency prevention pertinent to the OJP priority areas described above, and to provide the opportunity for selected individuals in doctoral programs to choose a research

topic in the field of juvenile justice, delinquency prevention or a related area for their dissertation study, thereby encouraging the expansion of researchers in this field.

Objectives

- To conduct basic or policy research on a specific issue, problem, or activity within juvenile justice and delinquency prevention pertinent to current priorities; and
- To investigate policy procedures and practices important to resolving operational issues in the juvenile justice system.

Program Strategy

Research subjects are broadly defined within juvenile justice. Extensive data exists for analysis. Proposed research that appears to develop new knowledge, evaluate existing or proposed policies and practices or revise old information has the potential for improving current practice and, therefore, has merit.

Eligibility Requirements

Applicants must have completed all university requirements for the doctoral degree, except for the internship (where required) and the research, writing, and defense of the dissertation.

The proposal must be accompanied by a *vita* that includes information on the candidate's education, experience and publications, if any. The applicant should also enclose a letter of support from his/her adviser indicating an evaluation of the proposed topic and the potential of the applicant.

Graduate Research Fellowship applicants should submit a paper (no longer than 10 double-spaced pages) that addresses research objectives, hypotheses and methodology; the appropriateness of the design to the issues raised; time schedules for major events of the study; and documentation that any necessary cooperation from organizations will be forthcoming. To be eligible to administer a Graduate Research Fellowship grant on behalf of a doctoral candidate, an institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Postsecondary Accreditation. Overhead costs are not allowed for this program.

Selection Criteria

All applicants, at a minimum, will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the research project is clearly stated. (30 Points)

• The problem to be addressed is based upon issues that are significantly related to juvenile justice and/or juvenile delinquency prevention and the OJP priority areas. (15 Points)

• The applicant demonstrates broad knowledge of the problem and any surrounding issues and is aware of present practices or programs addressing the problem. (15 Points)

2. The objectives of the proposed project are clearly defined and directly relate to the stated problem. (20 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products and the nature of the products to be submitted. (20 Points)

4. The project management structure is adequate to conduct the project successfully. (5 Points)

5. Applicant's academic credentials reflect adequate knowledge of juvenile justice issues to complete the project successfully. (20 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the activities proposed. (5 Points)

Award Period

The project period shall not exceed one year.

• Time extensions may be granted for completion and the delivery of the dissertation, but no further funds will be awarded.

• These time extensions must be requested before the expiration of the original grant and require the receipt of all progress reports showing reasonable progress toward the objectives identified in the original application.

Award Amount

Funding for this program has been set at \$50,000, which will support four to five Fellowships. The maximum amount for any one Fellowship is \$12,000. The specific amount is subject to negotiation.

The grant may include the Fellow's stipend and other university expenses, including continuing registration, library and certain university fees. Major project costs that may be compensated include: Clerical assistance, special supplies, reproduction, necessary local and out-of-town travel (reimbursed at the university's rate), foreign travel (with prior OJJDP approval) and computer time. Costs incurred prior to the formal grant award are not reimbursable.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to Graduate Research Fellowship Program, Research and Program Development Division, OJJDP, room 778, 633 Indiana Avenue NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 778, 633 Indiana Avenue NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Donni LeBoeuf, Research and Program Development Division, (202) 307-0586.

Visiting Research Fellowship Program

Purpose

The purpose of this program is to support independent research on policy-relevant issues by senior experienced researchers and operational leaders in the field of juvenile justice and delinquency prevention.

Background

The Visiting Fellowship Program has been established within the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) at OJJDP to solicit from two groups of juvenile justice professionals proposals which emphasize the connection between research and practice. Successful candidates are invited to work in the OJJDP offices in Washington, DC. There will be opportunities to interact with the OJJDP staff, with national leaders in their field, and with other visiting fellows, as well as the opportunity to develop, carry out and present the results of their projects to interested audiences. Eighty percent of the Fellowship period must be spent at the OJJDP offices.

OJJDP encourages and coordinates research and welcomes proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below.

Examples of specific topics of importance are included.

- *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

- Restitution.
- Mediation.
- Intensive surveillance systems, including electronic monitoring.
- Intervention and treatment of juvenile sex offenders.
- Delay of treatment and sanctions.
- Improved classification of offenders.

- *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

- Intervention in chronic juvenile offender activity.
- Treatment of violent offenders.

- *Evaluation.* Evaluative research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

- Evaluation of sanctions.
- Evaluation of the impact on drug use by participants in programs which use a decision-making process.

- *Prevention and Education.* Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

- Drug education to prevent use and other involvement.
- Literacy training and reduction of illiteracy.
- Chronic juvenile offenders.
- Family strengthening.
- Media violence.
- Reduction of truancy and dropouts.
- Detection of child abusers.
- Peer pressure on delinquency and drug use.

- *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

- Safe and drug-free neighborhoods.
- Innovative care resources for juveniles under the supervision of the court.
- Aftercare and transitional living for juveniles under supervision.
- Creation of healthy peer relations.
- One to one adult-juvenile support.
- Prevention of gang violence.

- *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.

- Treatment of abused and/or exploited children.
- Prevention of child exploitation.

- *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.

- Development of innovative, effective information systems for juvenile justice agency operation.

Goal

To provide juvenile justice practitioners and researchers an opportunity to undertake full-time independent research in the field of juvenile justice within the areas of the OJP priorities mentioned above.

Objectives

- To conduct independent basic or policy research important to juvenile justice and delinquency prevention problems, issues or activities; and
- To investigate policies, procedures, and practices important to resolving operational issues in juvenile justice.

Program Strategy

Selection for the program is competitive. It is based on the background and experience of the individual candidate and the quality and viability of the proposed project. Panels will review submissions to the Visiting Fellowship Program based on the applicant's status as a researcher, practitioner, or policy maker. Selection of visiting Fellows is based on a competitive review and evaluation of proposals for independent study. Recipients of the awards will be located at OJJDP for a period up to 24 months. While at OJJDP, Fellows will have the opportunity to participate in discussions of juvenile justice research programs, interact with OJJDP staff and other Fellows, and present colloquia on their own research. The program provides for full financial and logistical support with access to the abundant juvenile justice resources in and around Washington, DC.

Eligibility Requirements

Based upon their background and credentials, candidates are classified as:

1. *Researchers:* Persons with broad and extensive research experience in juvenile justice and delinquency

prevention subject areas. Candidates drawn from colleges and universities may propose research that could improve juvenile justice policies, current field operations or programs for the prevention of delinquency.

2. *Practitioners:* Eligible individuals may include juvenile justice professionals, educators, judges, law enforcement officers, etc. The candidates should have knowledge of how local communities function in the juvenile justice system, of delinquency prevention, of policy development and command structures within the juvenile justice system, and of the various factors that may contribute to juvenile delinquency. They may include those who are current leaders or show a potential for future leadership.

OJJDP support will cover or include: Fellow's salary, fringe benefits, reasonable relocation costs, travel essential to the project; supplementary expenses, including some special equipment; and office costs, including telephone, computers, supplies and furniture. (Salary may be adjusted based on any difference in cost of living between the applicant's residence and the Washington, DC, area.)

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the Fellow is clearly stated, and is based upon issues that are significantly related to juvenile justice and/or delinquency prevention and the OJP priority areas. (25 points)

2. The objectives of the proposed research project are clearly defined and directly relate to the problem. (20 points)

3. The project design is sound and has a high probability of achieving the project objectives. Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. (25 points)

4. The project management structure is adequate to conduct the project successfully. (5 points)

5. Professional achievement is at a level sufficient to conduct the project successfully. Applicant's professional background and expertise demonstrate more than adequate knowledge and experience with juvenile justice issues in order to bring the research to a successful completion. (20 points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 points)

Award Period

The project period is up to 24 months.

Award Amount

Funding for each fellowship will be subject to negotiation; tentative funding for the program has been set at \$270,000, which will typically support two to three Fellowships.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Those applications sent by mail should be addressed to Visiting Research Fellowship Program, Research and Program Development Division, OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Donni LeBoeuf, Research and Program Development Division, (202) 307-0586.

Field-Initiated Program

Purpose

Through the Field-Initiated Program, OJJDP encourages eligible parties to develop promising and new ideas that are relevant to the mission of OJJDP, particularly approaches that address current OJJDP and OJP priority areas, but that utilize approaches other than those called for by current and planned OJJDP projects (as outlined in OJJDP's Notice of Final Comprehensive Plan for Fiscal Year 1991, February 14, 1991, 56 FR 6232).

Background

Customarily, the research, development and training programs which OJJDP has sponsored deal with programs that are either specified by Congress or defined by the agency. In both cases, applicants have been limited to proposals which respond to specific requests by OJJDP. Thus, other imaginative and innovative approaches of researchers and practitioners are not always known to OJJDP. With the Field-Initiated Program, OJJDP welcomes

proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below. Examples of specific topics of importance are included.

- *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

- Restitution.

- Mediation.

- Intensive surveillance systems, including electronic monitoring.

- Intervention and treatment of juvenile sex offenders.

- Delay of treatment and sanctions.

- Improved classification of offenders.

- *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

- Intervention in chronic juvenile offender activity.

- Treatment of violent offenders.

- *Evaluation.* Evaluative research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

- Evaluation of sanctions.

- Evaluation of the impact on drug use by participants in programs which use a decision-making process.

- *Prevention and Education.*

Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

- Drug education to prevent use and other involvement.

- Literacy training and reduction of illiteracy.

- Chronic juvenile offenders.

- Family strengthening.

- Media violence.

- Reduction of truancy and dropouts.

- Detection of child abusers.

- Peer pressure on delinquency and drug use.

- *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

- Safe and drug-free neighborhoods.

- Innovative care resources for juveniles under the supervision of the court.

- Aftercare and transitional living for juveniles under supervision.
- Creation of healthy peer relations.
- One to one adult-juvenile support.
- Prevention of gang violence.

- *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.

- Treatment of abused and/or exploited children.

- Prevention of child exploitation.

- *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.

- Development of innovative, effective information systems for juvenile justice agency operation.

Goal

To promote field-initiated applications that will advance the prevention of juvenile delinquency and the effectiveness of juvenile justice practices.

Objectives

- To promote and support innovative research, development, demonstration or training programs in the juvenile justice field that pertain to the Fiscal Year 1991 priorities and show promise of innovative application beyond particular communities or States;

- To encourage new methods for dealing with the current priority problems; and

- To develop knowledge that will lead to new techniques, approaches and methods dealing with the juvenile justice system and delinquency prevention in terms of current priorities.

Program Strategy

Through the Field-Initiated Program, OJJDP is actively soliciting innovative program proposals which may be applied to multiple communities and States. Proposed programs must address pertinent issues and problems in the areas of current priorities. Proposals should define the needs and/or problems, and describe the objectives, strategy, and methodology to be employed. A brief review of the history of the issue and current knowledge and approaches to addressing this issue should be included. Through a competitive process, all applications will be subjected to peer review. Grants will be awarded to as many projects as funding allows. Projects may last up to 18 months.

Eligibility Requirements

Applications are invited from individuals, public and private agencies, organizations, educational institutions or combinations thereof. In order to expand the pool of eligible candidates, applications will be accepted from for-profit organizations, provided they agree to waive any profit or fee and accept only allowable costs.

Applicants must demonstrate that they have experience in the design and implementation of the types of programs for which they are applying.

Selection Criteria

Applicants will be rated, at a minimum, on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the project is clearly stated. (15 points)

- Problems to be addressed are based upon issues that have particular relevance to current OJJDP and OJP priorities. (7 points)

- The applicant demonstrates broad knowledge of the current situation and practices and is aware of training, research or demonstration project needs. (8 points)

2. The objectives of the proposed project are clearly defined. (20 points)

- Applicant fully explains project's objectives. (10 points)

- Objectives are clear and measurable. (10 points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (25 points)

- The design contains research, training or demonstration elements directly related to the program objectives. (10 points)

- Applicant provides a detailed work plan describing the methodology of the program. (15 points)

4. The project management structure is adequate to conduct the program successfully. (15 points)

- Applicant provides specific guidelines and timelines with regard to the training, research or demonstration program activities. (10 points)

- Applicant explains how management structure is consistent with the needs of the program. (5 points)

5. Organizational capability is demonstrated at a level sufficient to conduct the project successfully. (15 points)

- Applicants demonstrate knowledge and experience with juvenile justice issues, particularly with regard to the area of study he or she is addressing. (5 points)

- Applicant identifies staff qualified to successfully support the project. (10 points)

6. Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken and budgeted costs are directly related to the achievement of the program objectives. (10 points)

Award Period

The grant period will be up to 18 months.

Award Amount

The total amount available is \$500,000. Award amounts will be subject to negotiation. We anticipate funding 10 to 20 projects with available funds.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the *Federal Register*. Those applications sent by mail should be addressed to Jeffrey Slowikowski, Research and Program Development Division, OJJDP, room 782, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 782, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Jeffrey Slowikowski, Research and Program Development Division (202) 307-5929.

Victims

Pilot Sites for Victims and Witnesses in the Juvenile Justice System Development Program

Purpose

This program is designed to fund sites to implement model program components for victims and witnesses of juvenile crime.

Background

Victims, once forgotten figures in the criminal justice system, have received increased attention and assistance in the past decade. Programs designed to alleviate the distress suffered by victims of crime, and to ease the subsequent

ordeal of participating in the criminal justice process, have burgeoned. With advocates from these programs spurring legislative efforts, the vast majority of States have passed victims' rights statutes.

Unfortunately, victims of juvenile crime have not shared equally in these advances, even though juveniles account for more than one in four arrests for serious crimes. There is no reason to believe that victims of juveniles suffer any less or find their contacts with the justice system any easier than victims of adults. Yet, few victim assistance programs routinely provide assistance in cases referred to juvenile court. Neither have many programs tailored their materials to provide information specific to the juvenile system.

To remedy this neglect of victims and of witnesses to juvenile crime, OJJDP sponsored the Victims and Witnesses in the Juvenile Justice System Development Program.

The materials developed under this program describe eight core components of effective programs: (1) Orientation to the juvenile justice process; (2) assistance to victims and witnesses who must testify; (3) notification of case status and outcomes; (4) assistance preparing victim impact statements; (5) crisis counseling; (6) information and referral; (7) assistance with compensation and restitution; and (8) public education and training. The materials also cover strategies for developing a program, including key decisions, program planning, implementation steps, and monitoring and evaluation.

The program model developed by the Victims and Witnesses in the Juvenile Justice System Development Program includes the following:

Program Goals. The central goals of the victim and witness model program are to help victims or witnesses negotiate the juvenile justice process; to afford victims their legal rights; and to make participation in the system less burdensome. Programs may also try to: help victims return to pre-crime levels of functioning; help victims recoup losses; increase victim and witness participation in the system; coordinate witnesses; increase the likelihood of offender rehabilitation by holding them accountable for their behavior; and increase the likelihood that dispositional orders fit the specifics of the crime.

Target Population. The target population for a model program must include victims and witnesses referred to juvenile court intake or the prosecutor's office. Programs may rank types of victims and witnesses, and

reserve the most immediate, personal or comprehensive services for high priority victims and witnesses.

Initial Screening Mechanism. Model programs must specify procedures for systematically reviewing the characteristics of cases to determine whether the victim or witness is eligible for services. The program may screen court or prosecutor files to identify clients, or a juvenile justice agency may send copies of documents such as petitions to the program for review.

Core Service Components. Model programs typically provide eight core services, although not all services are offered to all types of victims. The core services are:

1. **Orientation to juvenile court and the rights of victims and witnesses.** Through either a written communication (letter, brochure, subpoena insert) or a telephone call, the program informs victims or witnesses: About the juvenile court (role and function according to state law); what can happen to the case (definitions of terminology, the process for each eventuality, the possible dispositions); about their rights in the process; and where to go for more information.

2. **Information about case status and outcome.** Using form letters or telephone calls, the program notifies victims and witnesses of: Date of the adjudicatory hearing and changes to that date, the disposition date, the outcome of the case (including decisions to drop the case, divert it, or transfer it to the adult criminal court); and the sentence (insofar as the court permits).

3. **Assistance to victims and witnesses who must testify.** The program serves as a central point for answering questions about testifying and for resolving other problems that might discourage appearance at court. At least for those victims who request it, the program provides help with logistics (e.g. where to go, transportation, employer or school intervention); preparation for court (what will happen, where to sit, how to testify effectively); victim reception upon arrival at court; court accompaniment; and intervention in victim intimidation.

4. **Facilitating victim and witness participation in the process.** The program informs victims and witnesses about their opportunities to participate in the court process, assists them in attending hearings, and assists victims in providing oral or written impact statements that include information about the physical, emotional or financial effects of the crime, facts about the victim that rendered him or her particularly vulnerable, and

circumstances surrounding the crime such as a particular cruelty.

5. **Assistance with compensation and restitution.** The program informs victims about opportunities for restitution and compensation, and assists them in documenting their losses.

6. **Crisis intervention.** At a minimum, program staff have enough training in crisis counseling and listening skills to be able to assess whether the emotional state of the victim requires referral to community resources.

7. **Information and referral.** Programs develop networks of community referral agencies and refer victims who need long-term psychological treatment, legal information and services, emergency assistance, and support from other victims (e.g., MADD, Parents of Murdered Children, and Women Against Rape).

8. **Education and training.** By making presentations to community groups, disseminating printed materials, meeting with juvenile justice personnel, and participating in interagency task forces of groups, the program educates the public about the problems, needs, and rights of victims and witnesses, and stimulates community support for the program.

Goal

To stimulate the development of assistance to victims and witnesses of juvenile crime in local communities and to increase knowledge about effective strategies for assistance by implementing the model strategies developed by the Victims and Witnesses in the Juvenile Justice System Development Program.

Objectives

- To stimulate juvenile justice agencies and victim and witness programs to develop services for victims and witnesses of crime;
- To help victims and witnesses of juvenile crime negotiate the justice process, to afford them their legal rights, and to make participation in the system less burdensome; and
- To generate information on client characteristics, service delivery, and implementation experiences that will help refine future service strategies for victims and witnesses of juvenile crime.

Program Strategy

The final phase of the Victims and Witnesses in the Juvenile Justice System Development Program will involve implementing the model program components in three to four jurisdictions across the country. OJJDP is requesting applications from jurisdictions

interested in implementing the program components.

While jurisdictions interested in responding to this request for applications may have an existing victim witness program, it should not be comprehensive in nature. Such jurisdictions must demonstrate that victims or witnesses of juvenile crime are underserved and that implementation of the model components will significantly increase the number and type of victims and/or witnesses of juvenile crime served.

Applicants will be expected to adapt and implement the model components developed by the Victims and Witnesses in the Juvenile Justice System Development Program. These components focus on assisting victims and witnesses as they interact with the juvenile justice system, often beginning at the time the case is referred to the juvenile court by the prosecutor. Although components are designed to serve a broad spectrum of victims, they may focus on certain types of victims, such as victims of serious juvenile crime. This program is not intended to fund applications that aim to serve only child victims or applicants that will have limited involvement with cases that reach the court system.

Applicants will be expected to cooperate with monitoring requirements established by the Victims and Witnesses in the Juvenile Justice System Development Program. These requirements include providing information about client characteristics, service delivery, and implementation experiences. Applicants will further be required to cooperate in a site visit to their program by staff of the Victims and Witnesses in the Juvenile Justice System Development Program. Applicants will also be expected to send a representative to a one-day training workshop in Washington, DC. Costs for travel to the workshop should be included in the proposed budget. Applicants must also provide commitments from the juvenile prosecutors, the juvenile court and other appropriate juvenile justice agencies that they will cooperate with the program and allow access to records to identify program clients.

The activities and products to be completed by the selected sites during the project are as follows:

Activities:

- Development of an implementation plan.
- Implementation of the model in each site.
- Assisting technical assistance provider with the development of a dissemination strategy.

Products:

- An implementation plan.
- A policy and procedures manual for the project.

Eligibility Requirements:

Eligible organizations and agencies include, but are not limited to, juvenile courts, juvenile probation agencies, prosecutor's offices, victim assistance organizations, human service agencies, mental health agencies, law enforcement agencies, and community-based organizations.

Application Requirements. The narrative portion of the application, which responds to the requirements set forth below, should be substituted for Section IV of the Federal application (Standard Form 424).

Abstract. Begin the application with a short (one-half page) summary of the project—identification of the applicant organization, what activities are planned, whom these will affect, what is expected to be accomplished, and why this work is important.

Background. This section should describe the characteristics of the project jurisdiction that will affect the operation of the project. Relevant information will include general demographic data and crime statistics, as well as juvenile court data. Describe what services are currently provided in the project jurisdiction to victims and/or witnesses in both the adult system and the juvenile system and identify any obvious gaps in services. Briefly summarize any statutory provisions relating to victim services or participation in the court process, and any information about what victim practices are currently permitted in the juvenile court.

Goals and Objectives. This section should state what the project intends to accomplish within the context of the goals and objectives specified in this announcement. The applicant must specify the project objectives to include:

- Whom the project will serve;
- What are the specific program strategies;
- What outcomes the program hopes to achieve; and
- How the goals and objectives relate to statutory provisions in the jurisdiction that affect victims and/or witnesses of juvenile crime.

Target Population. Describe the specific group of victims and/or witnesses the project will serve and the approximate caseload size based on available data. If the applicant intends to prioritize different types of victims for certain types of services, describe the characteristics of the priority classes of victims.

Program Strategy. This section describes what the applicant will do:

- The screening mechanism. Describe how cases will be identified.
- The service components to be implemented. Using the descriptions of core components of effective programs (described above and in more detail in "Helping Victims and Witnesses in the Juvenile Justice System Development Program"), indicate which components will be emphasized and how they relate to the goals and objectives.
- The strategies to be employed to implement the service components. For instance, a strategy for orienting victims to the juvenile court process may consist of developing a brochure and disseminating it to the target population. In this case, describe what information will be included in the brochures, steps to be taken to prepare it, for which types of victims it is intended, and how the project will ensure that those victims receive it.
- Potential obstacles to implementation of the core components and strategies for circumventing them.

Project Management Plan.

1. *Organizational Structure.* Describe where the project will be housed, physically and organizationally. Where will the project fit in the existing organizational structure? To whom will the staff report? How does the project fit within the host agency's mission and activities?

2. *Organizational Capability.* Document the experience of the agency or organization with similar or relevant activities.

3. *Staffing.* Who will conduct the project? Provide a job description with titles, responsibilities, qualifications, skills and knowledge of the proposed staff. Include resumes of proposed staff, if possible.

4. *Implementation Plan and Timeline.* List major implementation activities and specify the time to accomplish each activity. These activities should include start-up tasks (hiring staff, arranging screening procedures) and the preparation of materials, as well as service delivery tasks. Resources. Describe the facilities, equipment, staff capabilities and other resources available to the project.

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the project is clearly stated. (20 points)
 - The applicant demonstrates a broad knowledge of the problem, surrounding

issues and present practices or programs that address the problem. (10 points)

- The problem and issues related to victims and witnesses of juvenile crime in that jurisdiction are well defined and clearly stated. (10 points)

2. The goal(s) and objectives are clearly defined and relate directly to the problem to be studied. (20 points)

- A well defined overall project goal(s) is stated for the project that relates directly to implementation of the program model. (10 points)

- The objectives are stated in measurable terms and relate directly to the stated problems. (10 points)

3. The project design is sound and contains program elements directly related to the achievement of the project objectives. (30 points)

- The project addresses how it will implement all of the victim witness model program components that are consistent with their goal(s) and objectives. (15 points)

- The applicant provides an implementation plan and a timeline with significant milestones for products and future products to be developed. (15 points)

4. The project management structure is described and a chart depicting the management structure and lines of authority is provided. (10 points)

5. The applicant's capability is demonstrated at a level sufficient to conduct the project successfully. Staff capabilities are set forth and resumes for key staff are provided. Resumes of key staff demonstrate a background with juvenile justice and victim, witness issues. (15 points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 points)

Award Period

The project period will be 12 months.

Award Amount

Up to \$20,000 will be available for each of the three to four sites selected to participate in the program.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information, including "Helping Victims and Witnesses in the Juvenile Justice System: A Program Handbook" and the victim witness operations manual, will be provided upon request for the Application Kit (contact below). Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These

documents will be provided in the Application Kit. Applications for test sites must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the *Federal Register*. Those applications sent by mail should be addressed to Travis A. Cain, Special Emphasis Division, OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Travis A. Cain, Special Emphasis Division, (202) 307-5914.

General Application and Administrative Requirements

Eligible Applicants

Applications are invited from eligible agencies, institutions or individuals, public or private. Private-for-profit organizations are not eligible for special emphasis grants but are for other grants; however, they must waive their fee in order to be eligible.

Applicants must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants must demonstrate that they have management capability in order to be eligible for funding consideration.

Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and budget narrative. All applications must include the information required by the specific solicitation as well as the Standard Form 424.

Applications that include proposed non-competitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of \$25,000.

Private, nonprofit applicants who have not previously received Federal funds are required to submit a copy of the Office of Justice Programs, Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). This form must be prepared and submitted along with the application. Other applicants may be requested to submit this form. The CPA certification is required only of those applicants who

have not previously received Federal funding.

Applicants who are receiving other funds in support of the proposed activity should list the names of the other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public or private grantor and amount to be contributed during this program period. Give a brief description of program.

An original and two copies of the application are required. To facilitate the review of the applications, two additional copies are requested. Applications and copies must be sent to the following address: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t. on the date specified in the solicitation. Delivered applications must be taken to the designated room at the above mentioned address between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

To comply with Executive Order 12372, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

Application Review Process

All applications will be reviewed by a panel of experts who will make recommendations to the Administrator per section 262 of the OJJDP Act and 28 CFR, part 34. The panel will assign numerical values in rating competing applications based on the point distribution in the Selection Criteria for each specific program. Peer reviewers' recommendations are advisory only and the final award decision will be made by the Administrator. OJJDP will negotiate specific terms of the awards with the selected applicants.

Evaluation

OJJDP requires that funded programs contain plans for continuous self-assessment to keep program management informed of progress and

results. Many funded projects will be considered for participation in independent evaluations initiated by OJJDP. Project management will be expected to cooperate fully with designated evaluators.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. The circulars, along with additional information and guidance, are contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual includes information on allowable costs, methods of payment, audit requirements, accounting systems and financial records.

Civil Rights Requirements

Sec. 809 (c)(1) of the Omnibus Crime Control and Safe Streets Act (OCCSSA) of 1968, as amended, applicable to OJJDP funded programs and projects under section 292(b) of the JJDP Act, provides that no person in any State shall on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title. Recipients of funds under the Act are also subject to the provisions of title VI of the Civil Rights Act of 1964; sec. 504 of the Rehabilitation Act of 1974, as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1974; and the Department of Justice Non-Discrimination Regulations 28 CFR part 42, subparts C, D, E and G. Upon request, applicants shall maintain such records and submit to OJJDP or OJP timely, complete and accurate information regarding their compliance with the foregoing statutory and regulatory requirements.

In the event a Federal or State court or a Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights (OCR) of the Office of Justice Programs.

Drug-Free Workplace

Title V, sec. 5153 of the Anti-Drug Abuse Act of 1988 provides that all

grantees of Federal funds, other than an individual, shall certify to the granting agency that it will provide a drug-free workplace by:

- Publishing a statement notifying employees that the unlawful manufacturing, distribution, dispensation, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- Establishing a drug-free awareness program to inform employees about:
 - The danger of drug abuse in the workplace;
 - The grantee's policy of maintaining a drug-free workplace;
 - Any available drug counseling, rehabilitation and employee assistance programs; and,
 - The penalties that may be imposed upon employees for drug abuse violations.

- Making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement of notification prohibiting controlled substances in the workplace.

- Notifying the employee that as a condition of employment in such grant, the employee will:

- Abide by the terms of the statement; and,
- Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

- Notifying the granting agency within 10 days after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction.

- Imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted.

- Making a good faith effort to continue to maintain a drug-free workplace.

The U.S. Office of Management and Budget, in collaboration with other Federal executive agencies, including the Department of Justice, has developed regulations to implement the Drug-Free Workplace Act of 1988, 28 CFR part 67, subpart F.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A-128, "Audits of State and Local Governments," which establishes regulations to implement the

Act. OMB Circular A-128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to OJJDP grantees.

Institutions of higher education, hospitals and other non-profit organizations have the responsibility to provide for an audit of their activities not less than every two years. The required audits are to be on an organization-wide basis rather than on a grant-by-grant basis.

Governmentwide Debarment and Suspension (Nonprocurement)

This subpart of 28 CFR part 67, provides that executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and non-financial assistance and benefits. Debarment or suspension of a participant in a program by one Agency has governmentwide effect. It is the policy of the Federal Government to conduct business only with responsible persons, and these guidelines will assist agencies in carrying out this policy.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction (OJP Form 4061/1). All direct recipient grantees must complete an OJP Form 4061/1 prior to entering into a financial agreement with subrecipients. This requirement includes persons, corporations, etc. who have critical influence on or substantive control over the award. The direct recipient will be responsible for monitoring the submission and maintaining the official subrecipient certifications.

Certification Regarding Debarment, Suspension, Ineligibility and Other Responsibility Matters—Primary Covered Transactions (OJP Form 4061/2). Certifications must be completed and submitted by grantees of categorical awards to grantor agency program officer during the application stage.

Disclosure of Lobbying Activities

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan or a Federal commitment to insure or guarantee a loan, to disclose lobbying. The term "recipient," as used in this context, does not apply to any

Indian tribe or to tribal or Indian organization.

A person who requests a Federal grant, cooperative agreement or contract exceeding \$100,000 is required to file a written declaration with OJP. The declaration shall contain:

- A certification that addresses payment made or to be made with both Federal or non-Federal funds for influencing or attempting to influence persons in the making of Federal awards.

- "Disclosure of Lobbying Activities" must be submitted if payments were made with non-Federal funds and must contain the following information with respect to each payment and each agreement:

- Name and address of each person paid, to be paid or reasonably expected to be paid;
- Name and address of each individual performing the services for which payment is made, to be made or reasonably expected to be made; and
- The amount paid, how the person was paid and the activity for which the person was paid, is to be paid or is reasonably expected to be paid.

- Copies of certification and disclosure of lobbying activities, as outlined above, received from subgrantees, contractors or subcontractors under a grant, cooperative agreement or contract for Federal subgrants exceeding \$100,000.

A subgrantee, contractor or subcontractor under a grant, cooperative agreement or contract, who requests or receives Federal funds exceeding \$100,000 is required to file a written declaration, as described above, with the person making the award.

A declaration must be filed at the end of each calendar quarter in which there occurs any event that materially affects (\$25,000 or more) the accuracy of the information contained in any declaration previously filed for a grant, cooperative agreement, contract, subgrant or subcontract. These declarations shall be filed as follows:

- Grant, cooperative agreement and contract recipients shall send their amended declarations and copies of amended declarations for Federal subgrants to the Office of the Comptroller not later than 30 days after the end of each calendar quarter.

- Subgrantees, contractors or subcontractors under a grant, cooperative agreement or contract shall send their amended declarations each quarter to the person who made their subgrant.

Declarations are also required for extensions, continuations, renewals, amendments and modifications exceeding \$100,000 or resulting in the award exceeding \$100,000.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Suspension or Termination of Funding

OJJDP may suspend, in whole or in part, or terminate funding for a grantee for failure to conform to the requirements or statutory objectives of the Act. Prior to suspension of a grant, OJJDP will provide reasonable notice to the grantee of its intent to suspend the grant and will attempt informally to resolve the problem resulting in the intended suspension. Hearing and appeal procedures for termination actions are set forth in the Department of Justice regulation at 28 CFR part 18.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 91-11627 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-18-M

The purpose of the American Medical Association is to advance the science and art of medicine, to promote the health of the people, and to secure the highest standards of medical education and practice. The Association is composed of physicians, surgeons, dentists, and other medical professionals who are dedicated to the service of their patients and the advancement of their profession. The Association's activities include the publication of the Journal of the American Medical Association, the holding of annual meetings, and the establishment of various committees and commissions to study and report on matters of interest to the medical profession. The Association also provides a forum for the discussion of medical issues and the exchange of ideas among its members. The Association's efforts are aimed at improving the quality of medical care and the health of the American people.

The American Medical Association is a non-profit organization that is dedicated to the advancement of the medical profession and the health of the American people. The Association's primary purpose is to advance the science and art of medicine, to promote the health of the people, and to secure the highest standards of medical education and practice. The Association is composed of physicians, surgeons, dentists, and other medical professionals who are dedicated to the service of their patients and the advancement of their profession. The Association's activities include the publication of the Journal of the American Medical Association, the holding of annual meetings, and the establishment of various committees and commissions to study and report on matters of interest to the medical profession. The Association also provides a forum for the discussion of medical issues and the exchange of ideas among its members. The Association's efforts are aimed at improving the quality of medical care and the health of the American people.

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**Friday
May 17, 1991**

Part IV

Small Business Administration

13 CFR Parts 121 and 125

**Procurement Assistance; Small Business
Regulations; Program To Plant Trees on
Land Owned or Controlled by State or
Local Governments; Final Rule**

SMALL BUSINESS ADMINISTRATION**13 CFR Parts 121 and 125****Procurement Assistance; Small Business Size Regulations; Program To Plant Trees on Land Owned or Controlled by State or Local Government**

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The proposed regulation, published February 12, 1991 (56 FR 5734) governing the Small Business Administration's grant program for small business to plant trees on land owned or controlled by state or local government is now promulgated in final form.

The Final Rule sets forth the procedures in 13 CFR part 125 to implement section 4 of Public Law 101-515, the Natural Resources Development Program. The Final Rule also adds language to 13 CFR part 121 to establish the small business size standard for tree planting activities under this program at 100 employees.

This Final Rule will be used as a means of encouraging and developing the capacity of small business concerns to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, to direct grant or contract recipients to utilize small business contractors or concerns in connection with the program to plant trees and, to the extent practicable, to divide the project to allow more than one small business concern to perform work under the project.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT:

William F. Berry, Director, Office of Natural Resources Sales Assistance, Office of Procurement Assistance, Small Business Administration, Washington, DC 20416, 202-205-6468.

SUPPLEMENTARY INFORMATION: SBA published a notice of proposed rulemaking on the Natural Resources Development Program in the *Federal Register* 56 FR 5734, February 12, 1991. This rule is on publication in the *Federal Register* effective due to time constraints imposed by the seasonal nature of the planting cycle. It is essential that SBA immediately begin the grant-making procedure established by this rule so that the tree planting projects which will be undertaken pursuant to this program can receive funding in time for the Fall 1991 planting season.

This final rule implements the Natural Resources Development Program by adding two new sections to title 13 CFR 125.12, Code of Federal Regulations. Section 13 CFR 125.12 sets forth the guidelines and procedures for implementing the tree planting program, while section 13 CFR 121.1013 establishes the size standard for small businesses seeking to participate in the Natural Resources Development Program at 100 employees.

Section 13 CFR 125.12(e) establishes a formula for determining grant amounts available to states for planting trees on lands owned or controlled by the state or local government. Not less than half of the total amount available shall be allocated to each state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands, on the basis of population in each area as compared to the total population in all areas. The standard is the Bureau of the Census annual population estimate or the decennial census, whichever is most current.

To be eligible for a grant an applicant must contribute to the project a sum equal to at least 25% of the project cost from sources other than the Federal Government. Such non-Federal money may include in-kind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees. Non-Federal money, or in-kind contributions, cannot include any value attributable to the land on which the trees are to be planted.

The remaining half of the available amounts will be available to applicants who agree to contribute more than the requisite 25% in non-Federal funds. Section 125.12(f) details the grant application process.

For any fiscal year, each state must consolidate requests from local governments to participate so that only one application would be submitted to SBA by each state.

Public Comment on Proposed Policy and SBA's Responses

In response to the notice published February 12, 1991 the SBA received several letters with comments. Most of the letters were from state agencies. Other letters were received from individuals, trade associations, local governments and agencies of the Federal government.

The Small Business Administration (SBA) received a comment which suggested that the four U.S. territories of Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

be added to the list of eligible recipients. This has been done.

One commenter asked that the term grant be expanded to include contract. The law only authorizes SBA to enter into grants with states therefore we cannot expand the term to include contracts. Another asked that the definition of local government be broadened. In each of these cases, the definitions in the regulation were tailored to fit with 13 CFR part 143—Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments which the SBA already has in place.

A commenter asked that the definition of tree be altered so as not to preclude any species, in a given area, which is considered to be classified as a tree. This addition has been made. The law is clear as to its intent, i.e. to plant trees, so another suggestion to include shrubs in the definition of tree was rejected.

Section 13 CFR 125.12(f) states, among other things, for any fiscal year, each state may submit only one application for a grant under this program. Several commenters objected to this because requiring specific technical information at the time of the grant application limits the implementation flexibility and puts an undue burden on pulling together qualifying projects from local communities. Section 4 of Public Law 101-515(b) states in order to accomplish objectives of this section * * * "Based on this program, a state may submit a detailed proposal for tree planting by contract." It also is clear from the conference report on Public Law 101-515 that Congress intended the process to be as written in the proposed rule. The report states, "Each state would consolidate requests from local governments to participate so that only one application would be submitted to SBA by each state." Detailed proposals are also necessary to clearly assess and rate the matching requirements. Thus the requirement that each state submit only one grant application will stand. However, the program announcement sent to each state will allow 60 days for the state to submit its application thereby allowing sufficient time to gather the requisite information.

Proposed section 13 CFR 125.12(g)(5)(ii) stated that all planting stock and supplies will be purchased from qualifying small businesses. This section has been changed to state that, if purchased, planting stock and supplies will be purchased from small business. The word change is in response to comments that the rule precludes the use of planting stock from nurseries operated by state or local governments.

There were several comments objecting to the limitations of the *Society of American Foresters Forestry Handbook* (section 13 CFR 125.12(g)(6)) as a minimum standard for evaluation of proposals. None of the commenters addressed specific shortcomings. Moreover, SBA is not aware of any serious shortcomings. However, SBA would welcome additional information on this subject and would make appropriate changes. Since this is a minimum standard, states can use methods exceeding those standards as long as they conform to standards that are reasonable and customary.

One commenter indicated that states need to be able to enter into subgrants with local governments. States have that authority as prescribed in 13 CFR part 143.37.

One commenter objected to the absence of a reference to specifying credentials for small businesses, i.e., a landscape license. SBA considers this a state responsibility since they would be the ultimate licensing authority.

Some commenters suggested additional criteria including compliance with the Clean Air Act for approving a state grant application in addition to contributing funds from non-Federal sources. Attachment 2 to the grant application package will list the Federal Requirements Policies and Standards applicable to the individual grant. SBA feels adding further qualifications requiring verification and certification would unnecessarily complicate an otherwise relatively straightforward process.

Several commenters had questions concerning the operation of the grant process. Those questions will be addressed in detail in the Program Announcement and Grant Application package. SBA plans to have the Program Announcement ready to mail each state about the same time the final rule is published in *Federal Register*.

One commenter asked that funds be made available for tree planting research and tree inventories. Public Law 101-515 is very clear as to the dedication of funds to tree planting, which includes care and maintenance for three years. Thus, SBA is not accepting this comment.

Some commenters disagreed with the use of population and ability to match funds as fixed distribution requirements. Public Law 101-515 mandates that one-half of the amounts authorized be allocated to the States based on population. The allocation of the second half of the funds, is permissive, but the law states that SBA may award these funds based on state's willingness to contribute more money to the project.

Because each state can make only one application per fiscal year, must consolidate all local government requests into one application and must know up front the level of funding available, the SBA has decided to base allocation of the second half of the money in the same way as the first half, on population and contribution level. It should be noted that SBA has, in this final rule, amended the table establishing the contribution for the second one-half of the money by eliminating the one percent to four percent over the required twenty-five percent category.

Some commenters thought the fund allocation process might be clarified. An example of the fund allocation process will be included in each Program Announcement.

Some commenters observed the proposed rules did not provide funds to the states for handling funds, program administration or provision of technical assistance. The observation is correct and the action was intentional. The main thrust of Public Law 101-515 section 4, which amended the Small Business Act, is to authorize the Administrator to enter into grants with states for the purpose of contracting with small businesses to plant trees on the lands of states or local governments. There is no allowance for the expense of additional personnel or writing-off administrative costs. There is an allowance for applicants to contribute to the cost of the project. SBA feels these costs more properly belong with the non-Federal funds contributed by the applicant as part of the direct contribution or as in-kind contributions to the proposal as allowed for in the statute. It is also clear that Congress intended that Agencies of the Federal Government cooperate by providing, without charge, technical services with respect to the planting and growing of trees.

Finally, through discussions with several states, SBA understands that, generally, states plan to use the funds they will receive pursuant to this program to fund projects that would not have otherwise been funded. As a function of its annual inspection and audit authority established in § 125.12(g)(9), and in preparing the reports to the President and Congress that are required annually under section 4(h) of Public Law 101-515, the SBA will seek to collect information on the extent to which this program resulted in the planting of trees which, but for this program, would not have been planted. Thus, states should attempt to identify whether, and to what extent, the grants they receive under this program are

being used to establish new tree planting activities or to expand existing ones at the state and local level.

Size Standard Responses

There were no comments received addressing the specific questions outlined in the notice of proposed rulemaking. There were comments concerning the size standard: Four commenters supported the 100 employee standard; one commenter while not objecting to the 100 employee standard, felt businesses having less than 50 and/or less than 25 employees should be given preference over larger businesses; and one commenter found the rule to be right on target. Accordingly, SBA will implement the 100 employee standard.

Compliance With Executive Order 12291 or 12612; the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the direct effect of the rule will be on the states and not on small businesses.

The SBA certifies that this rule does not constitute a major rule for the purposes of Executive Order 12291, since the rule is not likely to result in an annual effect on the economy of \$100 million or more.

13 CFR 125.12(f) requires each state to make application for a grant to plant trees using standard forms: 424, 424A and 424B. These forms are subject to the Paperwork Reduction Act, 44 U.S.C. Ch. 35, and have been approved by the Office of Management and Budget under OMB Approval Nos. 0348-0043, 0348-004, and 0348-0040 (Standard Forms).

This rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Handicapped, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Research, Small businesses, Technical assistance.

As set forth in the preamble, this final rule amends parts 121 and 125 of title 13, Code of Federal Regulations, as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, as amended (15 U.S.C., 632(a), 634(b)(6), 644(a)), and Pub. L. 100-656, 102 Stat. 3853 (1988).

2. Part 121 is amended by adding § 121.1013 to read as follows:

§ 121.1013 Natural Resources Development Program.

Any concern or contractor participating in the Natural Resources Development Program described in 13 CFR 125.12 is a small business when, together with its affiliates, it does not have over 100 employees (rules for determining "number of employees" are set forth in 13 CFR 121.407).

PART 125—PROCUREMENT ASSISTANCE

1. The authority citation for part 125 is revised to read as follows:

Authority: Section 4 of Pub. L. 101-515 (104 Stat. 2140), Section 610(a) of Pub. L. 100-202 (101 Stat. 1329-39, sections 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631, et seq.), 31 U.S.C. 9701, 9702.

2. Part 125 is amended by adding § 125.12 to read as follows:

§ 125.12 Natural Resources Development Program.

(a) The Natural Resources Development Program is authorized under section 24 of the Small Business Act (15 U.S.C. 651). Pursuant to the statutory requirements of the Small Business Act the Small Business Administration is authorized to make grants to, or to enter into contracts with, any state for the purpose of contracting with small businesses to plant trees on land owned or controlled by such state or local government.

(b) The purposes of the program include:

- (1) To plant trees on land owned or controlled by state or local government;
- (2) To utilize small business contractors or concerns in connection with tree planting projects;
- (3) To encourage and develop the capacity of small business concerns to utilize this important segment of the economy; and
- (4) To permit rapid increases in employment opportunities in local communities.

(c) *Definitions.* (1) *Administrator* as used herein means the Administrator of the United States Small Business Administration, or any representative lawfully delegated the authority to act for such Administrator.

(2) *Fiscal Year* means the 12-month period starting October 1 and ending September 30.

(3) *Grant* means a grant as defined by 13 CFR part 143.3 and authorized under section 24 of the Small Business Act, 15 U.S.C. 632 et seq.

(4) *Grantee* means grantee as defined in 13 CFR part 143.3.

(5) *Grant Agreement* means the agreement contained in SBA Form 1222 and any other written conditions of the grant.

(6) *Grants Management Officer* as used herein means the SBA official responsible for the financial management and administration of a Natural Resources Development Program grant for the Federal Government.

(7) *Local Government* means a political subdivision of a state which includes, but is not limited to, such entities as counties, parishes, cities, towns and municipalities.

(8) *Non-Federal Money* means funds acquired from other than the Federal Government and may include in-kind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land or land charges on which the trees are to be planted.

(9) *Planting* means to set trees in the ground for growth and includes watering, application of fertilizer, herbicides, pruning and shaping and other subsequent care and maintenance for a period of three years after the trees are set in the ground.

(10) *Proposal* means an application and support materials for a grant for tree-planting on lands owned or controlled by State or local governments.

(11) *SBA or Grantor* as used herein means the United States Small Business Administration.

(12) *Small Business* as used herein means a business concern that has, including its affiliates, a number of employees not exceeding 100, and meets the other regulatory requirements found in 13 CFR part 121. The term "affiliates" is defined in 13 CFR part 121.401. The term "number of employees" is defined in 13 CFR part 121.404.

(13) *State* as used herein means any state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, U.S. Virgin Islands,

Guam, and the Northern Mariana Islands or any Agency or instrumentality of a state designated by such state to apply for a grant under this program exclusive of local governments.

(14) *Tree* means a perennial plant having a permanent woody, self supporting main stem or trunk, ordinarily growing to a considerable height and usually developing branches at some distance from the ground. This definition is not intended to preclude any species which is traditionally considered to be classified as a tree.

(d) *Eligibility.* Any state is eligible to apply for a grant to plant trees on state or local government land; provided such state agrees to contribute to the tree-planting project a sum equal to at least 25 percent of the project cost from sources other than the Federal Government and agrees:

(1) To utilize small business contractors or concerns in connection with all aspects of the tree-planting project; and

(2) To the extent possible, to divide the planting project to allow more than one small business concern to perform the work under the project.

(e) *Amount of a grant.* (1) One-half the total amount available shall be allocated to each eligible state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands on the basis of the population in each area as compared to the total population in all areas. The Bureau of the Census, of the Department of Commerce, annual population estimate or the decennial census, whichever is most current, will be the basis for that determination.

(2) SBA shall give priority in awarding the remaining one-half of the total amounts available to applicants who agree to contribute more than the requisite 25 percent of the project cost from non-Federal sources. The formula for determining how the remaining one-half of these funds will be allocated to applicants contributing more than the requisite amount will be as follows:

(i) The maximum allowable additional amount will be limited to a percentage of the amount computed based on the applicant State's population compared to the total population of all states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands; and

(ii) Of the maximum additional amounts, the total amount available will be prorated based on the amount the

applicant's percentage of contributed non-Federal funds exceeds 25%:

Percent over 25 percent	Percent additional available funds allocable
Less than 5 percent.....	None.
Over 5 percent.....	30.
Over 10 percent.....	40.
Over 15 percent.....	50.
Over 20 percent.....	100.

For example, a state must contribute to the total project cost a sum equal to at least 45 percent of the total project cost to qualify for 100 percent of the grant monies available to that state.

(f) Application for a grant. (1) A proposal may be initiated by any state Agency designated by the state to apply for such grant as described in § 125.12(c)(4). For any fiscal year each state may submit only one application for a grant under this program.

(2) Since only one grant may be authorized per state per fiscal year, the application must designate a single state agency responsible for receiving and administering the grant.

(3) The proposal shall consist of two separate sections.

(i) Section I—*Cost Proposal*—This section is to be comprised of: The Application; The Project Approval Information; The Budget Information; and Assurances, Certifications, and Attachments.

(ii) Section II—*Technical Proposal*—This section is comprised of the Program Narrative. A complete proposal shall contain a table of contents and shall be responsive to the technical requirements of the Program Announcement.

(4) Necessary application forms will be mailed to prospective grantees as part of an official program announcement.

(5) The complete proposal shall be submitted in original and two copies to such location as designated in the program announcement.

(6) The applicant shall make its best effort to deliver the complete proposal to the designated location by the due date and time specified. Late proposals may be accepted at the discretion of the Administrator.

(g) *Method of proposal/application technical criteria.* To be technically acceptable each applicant's proposal must:

(1) Clearly state the objective of the project.

(2) Describe the location(s) where the tree-planting project will take place; how many trees will be planted; and the species, and size and age of the trees to be planted. The proposal should include vicinity maps showing location of planting sites.

(3) Certify to the state's contribution, both amount and type. The total project cost must exceed the amount of Federal funds the state applies for in the grant application.

(4) Certify that the non-Federal contribution to the project does not include:

(i) Any value attributable to the land on which the trees are to be planted, and

(ii) That no part of the grant will be used to pay for land or land charges.

(5) Meet the objectives of section 24(c) of the Small Business Act.

(i) The proposal must state that all contracts for planting services will be awarded only to contractors who would qualify as small business concerns as defined in 13 CFR part 21.1013.

(ii) The proposal must state that all planting stock and supplies will come either from state or local government nurseries or, if purchased, will be purchased from businesses which would

qualify as small business as defined in 13 CFR part 121.1013.

(iii) The applicant's proposal must permit increased employment opportunity in local communities.

(iv) The proposal must, to the extent possible, divide the project to allow more than one small business concern to perform work under the project.

(6) Specify standards for site selection, site preparation, planting stock care and selection. The proposal must also certify that planting methods and overall care and maintenance conform to standards that are reasonable and customary. The minimum standard for this evaluation is hereby established as those criteria, instructions and examples contained in the *Forestry Handbook* 2nd Edition, Karl Wenger, Editor, for the Society of American Foresters. Sections 8 and 16. 1984. John Wiley and Sons, New York, New York. Copies may be obtained from the Society of American Foresters, 5400 Grosvenor Lane, Bethesda, Maryland 20814.

(7) Specify the personnel, their qualifications and experience, and who will be responsible for supervising the project.

(8) Articulate a cost-effective approach toward accomplishing the objectives of the project.

(9) Accommodate periodic inspection and post-audit by SBA.

(h) *Administration of the grant.* The grant will be awarded and administered according to the terms found in 13 CFR part 143, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, except as provided for in this part.

Dated: April 17, 1991.

Patricia Saiki,
Administrator.

[FR Doc. 91-11735 Filed 5-16-91; 8:45 am]

BILLING CODE 8025-01-M

Indian Affairs

**Friday
May 17, 1991**

Part V

Department of the Interior

Bureau of Indian Affairs

**Settlement Roll Preparation; Hoopa-Yurok
Settlement Act; Notices**

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Hoopa-Yurok Settlement Roll**

May 10, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is giving notice of the deadline for electing a settlement option under the provisions of section 6 of the Hoopa-Yurok Settlement Act (Settlement Act) of October 31, 1988, Public Law 100-580, as amended. Under section 6 of the Settlement Act, individuals 18 years of age or older who are determined finally eligible to be on the Hoopa-Yurok Settlement Roll prepared under section 5 will be given the opportunity to elect a settlement option from among three options. The three options are: (1) Membership in the Hoopa Valley Tribe if they meet the membership requirements specified in the Settlement Act; (2) membership in the Yurok Tribe; or (3) a lump sum payment in lieu of membership in either tribe. Minors finally determined eligible to be on the Settlement Roll will be deemed to have elected the Yurok membership option unless the parent or guardian of such a minor furnishes proof that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or legal guardian of the minor may elect another settlement option.

DATES: July 19, 1991, is the deadline for electing a settlement option under section 6 of the Hoopa-Yurok Settlement Act.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049-

4879; telephone: (916) 246-5141 (FTS 450-5141) or 1-800-BIAHYSA (1-800-242-4972).

Yurok Transition Team, 517 Third Street, suite 21, Eureka, California 95501; telephone: (707) 444-0433 or 1-800-848-8765.

Yurok Transition Team, P.O. Box 218, Klamath, California 95548; telephone: (707) 482-2921 or 1-800-334-6689.

Hoopa Valley Tribal Council, P.O. Box 1348, Hoopa, California 95546; telephone: (916) 625-4211.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Department Manual at 209 DM 8.

Section 5 of the Settlement Act directed the Secretary of the Interior to prepare a Settlement Roll to identify Yurok and other Indians of the Reservation eligible to participate in the settlement. The deadline for filing applications for inclusion on the Settlement Roll was April 10, 1989.

Under section 5(d) of the Settlement Act, once initial determinations of eligibility were made on all applicants, the Secretary was to publish the Settlement Roll in the *Federal Register*. All initial determinations of eligibility were made and on Thursday, March 21, 1991, the BIA published the names of persons included on the Hoopa-Yurok Settlement Roll in the *Federal Register* (56 FR 12062).

The Settlement Act further directed the Secretary to develop such procedures and times as may be necessary for the consideration of appeals from applicants who were initially determined ineligible for the Settlement Roll and, as a result of the amendment of the Settlement Act, of appeals by the Hoopa Valley Business Council or the Yurok Transition Team from the initial omission or inclusion of names on the Settlement Roll.

The names of applicants not initially on the Settlement Roll who are finally determined eligible on appeal will be added to the Settlement Roll and those individuals will be given the opportunity to elect a settlement option. Applicants who were initially determined eligible, but who are finally determined ineligible on appeal will not be eligible to participate in the settlement and their names will be removed from the Settlement Roll.

Section 6 of the Settlement Act directs the Secretary to give notice within sixty days of the publication in the *Federal Register* of the Settlement Roll by certified mail to each person 18 years or older named on the Settlement Roll of their right to elect a settlement option and the deadline for making that election. With respect to minors on the Settlement Roll the notice is to state that minors shall be deemed to have elected the Yurok membership option unless the parent or guardian furnishes satisfactory proof to the Secretary that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or guardian may elect another settlement option on behalf of the minor. The required notices were mailed to individuals by the Superintendent, Northern California Agency, BIA, on April 12, 1991.

Under section 6 of the Settlement Act, the Secretary is directed to establish a date by which time the election of an option must be made. Section 6 further directs that the date be 120 days from date of publication of the Settlement Roll in the *Federal Register*.

The Settlement Roll was published in the *Federal Register* on March 21, 1991. Consequently, the deadline for electing a settlement option is July 19, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11750 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-02-M

Federal Register

**Friday
May 17, 1991**

Part VI

Department of the Interior

Bureau of Indian Affairs

**Filing of Statute of Limitations; Hoopa-
Yurok Settlement Act; Notices**

**DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs****Hoopa-Yurok Settlement Act**

May 10, 1991.

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is publishing notice of the statute of limitation for filing certain claims under section 14 of the Hoopa-Yurok Settlement Act of October 31, 1988, Public Law 100-580, as amended. Any claim by a person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, challenging the partition of the joint reservation under section 2 of the Settlement Act or any other provision of the Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be forever barred if not brought by the date determined in accordance with the provisions of section 14.

DATES: Claims challenging the constitutionality of the Hoopa-Yurok Settlement Act by any person or entity, other than the Hoopa Valley tribe or the

Yurok Tribe, must be brought by September 16, 1991.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049-4879; telephone: (916) 246-5141 (FTS 450-5141).

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Section 14 of the Settlement Act provides that any claim challenging the partition of the joint reservation under section 2 or any other provision as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be brought, pursuant to 28 U.S.C. 1491 or 28 U.S.C. 1505, in the United States Claims Court. Section 14 further states that any claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, shall be forever barred if not brought within the later of 210 days from the date of the partition of the joint reservation as provided in section 2, or 120 days after the publication in the

Federal Register of the option election date under section 6.

On Wednesday, December 7, 1988, a document was published in the **Federal Register** at 53 FR 49361 providing official notice that the Hoopa Valley Tribe had adopted a valid resolution which met the requirements of section 2 of the Settlement Act. In accordance with section 2, partitioning of the joint reservation was effective with the publication of that notice in the **Federal Register**. More than 210 days have since passed.

A notice of the deadline for electing a settlement option under section 6 is being published as a separate document in the **Federal Register** today, May 17, 1991. A date 120 days from today is later than 210 days from the effective date of the partitioning of the joint reservation under section 2. Consequently, any claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, questioning the constitutionality of the Hoopa-Yurok Settlement Act must be brought by September 16, 1991, or be forever barred.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11749 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-02-M

Registered Great Federal Land

Friday
May 17, 1991

Part VII

Department of the Interior

Bureau of Indian Affairs

Flathead Indian Irrigation Project,
Montana; Notice

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Flathead Indian Irrigation Project,
Montana**

AGENCY: Bureau of Indian Affairs,
Department of the Interior.

ACTION: Proposed operation and
maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Flathead Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

DATES: Interested parties may submit written comments no later than June 17, 1991.

FOR FURTHER INFORMATION CONTACT:
Portland Area Director, Portland Area
Office, Bureau of Indian Affairs, 911 NE
11th Ave, Portland, Oregon 97232-4169.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce and increase in the assessment rates commensurate with actual operation and maintenance costs on the Flathead Irrigation Project. The proposed

assessment increases from 1992 amount to approximately 8.5%.

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, Chapter I, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information of the Flathead Irrigation Project for Calendar Year 1992 and subsequent years.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1913 and March 7, 1928, (38 Stat. 583, 25 U.S.C. 382; 45 Stat. 210, 25 U.S.C. 387).

**Irrigation Operation and Maintenance
Charges**

In compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1992 and subsequent years until further notice, are hereby fixed as follows:

Lands included in an Irrigation District, lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at \$17.80 per acre for the season of 1992 and subsequent years.

Payment

The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation District are biannually billed. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty for each month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all O&M charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Wilford Bowker,

Acting Portland Area Director.

[FR Doc. 91-11608 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-02-M

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Friday, May 17, 1991

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H.J. Res. 173/Pub. L. 102-42

To designate May 1991 and May 1992 as "Asian/Pacific American Heritage Month". (May 14, 1991; 105 Stat. 243; 1 page) Price: \$1.00

H.J. Res. 194/Pub. L. 102-43

Designating May 12, 1991, as "Infant Mortality Awareness Day". (May 14, 1991; 105 Stat. 244; 1 page) Price: \$1.00

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